

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

4 REDDY VIJAY ANNAPPAREDDY)
5 Plaintiff,)Trial Day 1
6)
7 vs.)Civil No.
8 Pam Arnold, et al.)18-cv-3012-JFA
9 Defendants.)
10)Baltimore, Maryland
11)May 31, 2023
12)9:34 a.m.
13)
14

15 THE ABOVE-ENTITLED MATTER CAME ON FOR
16 BENCH TRIAL
17 BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR.

18 A P P E A R A N C E S

19 On Behalf of the Plaintiff:

20 JOSHUA D. GREENBERG, ESQUIRE
21 KOBIE FLOWERS, ESQUIRE

22 On Behalf of the Defendant United States of America:

23 MATTHEW P. PHELPS, ESQUIRE
24 MOLISSA H. FARBER, ESQUIRE
25 LAWRENCE EISER, ESQUIRE

26 Also Present:

27 Reddy Vijay Annappareddy
28 Keegan Miller, Law Clerk

29
30
31
32 (Computer-aided transcription of stenotype notes)

33 Reported by:

34 Ronda J. Thomas, RMR, CRR
35 Federal Official Reporter
36 101 W. Lombard Street, 4th Floor
37 Baltimore, Maryland 21201

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1 (9:34 a.m.)

2 **THE COURT:** Please be seated. Good morning. We're
3 here to begin the bench trial in the case of Reddy Vijay
4 Annappareddy v. Pam Arnold, et al. and others. My law clerk
5 and I prepared as carefully as we could to hear the testimony
6 and decide this case.

7 Let's take care of a few housekeeping matters, to begin
8 with. I have decided in this case I do not want to request
9 proposed findings of fact and conclusions of law from the
10 parties. We intend to go back to South Carolina when we finish
11 the testimony and jump right on an order, and I think it would
12 be more productive for us to do it on our end.

13 Second, you're aware of the time limitations I've placed
14 on both sides. We have two chess clocks; one to be operated by
15 my law clerk, one to be operated by the courtroom deputy. And
16 it's a plunger on each side of the ledger. You push it down
17 when one side's on their feet, questioning the witness. The
18 clock will not be running during opening statements and
19 extended debate on evidentiary matters.

20 If it's a very brief objection, such as "Objection,
21 leading"; "Sustained, rephrase the question," there's no need
22 to stop the clock. But if there's an objection, that obviously
23 is going to require some discussion, I'm going to say, "Stop
24 the clock," and they will hit the pause button on the timer to
25 be fair to both sides.

1 We asked the parties to come prepared to put onto the
2 record at the outset all the exhibits that are coming in
3 without objection. And I understand there are basically none;
4 is that correct?

5 **MR. GREENBERG:** Your Honor, our positions are the
6 same, as stated in the last document we filed in this, I can
7 give you ECF number. But, essentially, we are willing to agree
8 to the admissibility of every exhibit. We highlighted in
9 yellow on the understanding it was only for state of mind
10 because of hearsay objection.

11 **THE COURT:** They're still admissible, just for a
12 limited purpose --

13 **MR. GREENBERG:** Yeah.

14 **THE COURT:** -- but they still can come in.

15 **MR. GREENBERG:** As long as it's on the record, we're
16 okay with that.

17 **THE COURT:** What about from the Government?

18 **MR. PHELPS:** Yes, Your Honor. In our view, the
19 exhibits are permissible, and that's what I understood this
20 effort to be. We can show that the documents for admissible
21 for their truth, if we have to. But for the purpose of just
22 stamping them admissible, the Government's Exhibits 1 through
23 50 should be in.

24 **THE COURT:** Does the Plaintiff agree with that?

25 **MR. GREENBERG:** Let me just check the document real

1 fast. I don't know if it's 1 through 50.

2 There are some exceptions, 37 we say is inadmissible. 41,
3 inadmissible. But otherwise, yes, 1 through 50 are in on the
4 understanding it's for the limited purpose of the agent's state
5 of mind.

6 **MR. PHELPS:** Your Honor, that's not consistent with my
7 understanding. I don't understand the objections to 37 and 41.
8 I was told that to the extent that there were timeliness
9 objections to the Government's disclosure, which was -- that
10 they would be withdrawn.

11 **MR. GREENBERG:** My apologies, I was looking at the
12 color coding, and Mr. Phelps is correct. Yes, we have
13 withdrawn those objections. He is correct.

14 **THE COURT:** So just tell me, put on the record the
15 exhibits that are in evidence with no objection.

16 On the Plaintiff's side. Plaintiff's exhibits.

17 **MR. GREENBERG:** So, Your Honor, there's no objection
18 [sic] that comes in with no objection. 1 through 50 are in.
19 Our position is they're admissible for the limited purpose
20 of --

21 **THE COURT:** We'll talk about the purpose later. So
22 you're saying you don't object, as long as it comes in for
23 limited purpose of effect of the words on the listener.

24 **MR. GREENBERG:** For the agent's state of mind.

25 **THE COURT:** State of mind?

1 **MR. GREENBERG:** Yes.

2 **MR. PHELPS:** Yes, Your Honor, Exhibits 1 through 50
3 are. Defense Exhibits 1 through 50.

4 **THE COURT:** The Plaintiff agrees they're in, we'll
5 talk about the purpose for which they'll come in later,
6 correct?

7 **MR. GREENBERG:** Yes, Your Honor.

8 **THE COURT:** What about the Plaintiff's exhibits?

9 **MR. PHELPS:** Your Honor, we had previously submitted
10 our position on their exhibits. I did not prepare a separate
11 list of their exhibits to be moved in at this point. We
12 prepared our own exhibit list to be moved in. So I don't have
13 anything other than -- we've previously notified them of our
14 position on significant volumes of exhibits --

15 **THE COURT:** Well, I just tried to speed things up by
16 getting all the exhibits in that the other side doesn't object
17 to, and that appears to be not obtainable here this morning.

18 **MR. PHELPS:** Your Honor, we stipulated to the
19 admissibility of dozens of their exhibits. I'm just saying I
20 bring that list with me today. I brought my list of my
21 exhibits that are coming in. I expected them to bring their
22 list of their exhibits that are coming in. That's all I'm
23 saying.

24 **MR. GREENBERG:** Your Honor, I think -- I think we can
25 clarify this. I think I can do what you're looking for. Let

1 me just find the most recent filing in this very quickly.

2 So the amended exhibit list that Your Honor granted leave
3 to file on -- it was filed on May 24th, has color coding, and
4 every one that's in green, the Government has stipulated to the
5 admissibility. I can read off the numbers, if Your Honor would
6 like.

7 **THE COURT:** Yeah, I think you should.

8 **MR. GREENBERG:** Okay.

9 And, Mr. Phelps, please let me know if I'm missing --

10 **MR. PHELPS:** I don't have it in front of me.

11 **MR. GREENBERG:** ECF No. 339-2.

12 **MR. PHELPS:** Okay.

13 **MR. GREENBERG:** All right. So No. 1, No. 5, No. 9, 12
14 through 18, 20 through 24, 26 through 29, 31, 33, 34 and 35, 37
15 through 51, 55 through 68, 70, 71, and I believe those are the
16 ones to which the Government has stipulated to admissibility.
17 And it looks -- the light blue category means they've
18 stipulated to authenticity if we haven't otherwise heard from
19 the Government on their position.

20 **THE COURT:** All right. Well, those numbers that you
21 just read are in without objection. When we come to one of
22 those during testimony, you can just say this is already in
23 without objection.

24 When we come to one that's in the other category, you've
25 got to formally offer it into evidence, and we'll see if we get

1 an objection and rule on it. All right.

2 **MR. PHELPS:** Your Honor, the Government also
3 stipulated to the admissibility of Exhibits 102 to 124,
4 Plaintiff's Exhibit 102 to 124. That was the recent find.

5 **THE COURT:** Those are the late-filed photographs and
6 so forth.

7 Anything before we hear opening statements?

8 **MR. PHELPS:** Your Honor, Mr. Flowers was kind enough
9 to share with me copies of his PowerPoint presentation this
10 morning. I did not share mine with him. But he does have
11 exhibits and demonstrations on the PowerPoint that were not
12 disclosed as exhibits in this case, and so we would object to
13 things that have not been disclosed as exhibits being cited in
14 the PowerPoint. I understand that we have cited evidence that
15 they've objected to, but it has been disclosed, and we plan to
16 get the evidence in.

17 **THE COURT:** The PowerPoint is for opening statements?

18 **MR. FLOWERS:** It's for opening statements, Your Honor.
19 I've already provided a copy of the PowerPoint to the Court
20 and, obviously, to the clerk. And our position, simply, is
21 that everything in the PowerPoint that has been admitted into
22 evidence has the exhibit number on it.

23 So if you'll look, Your Honor, at Page No. 2 of the
24 PowerPoint, you will see down at the bottom there that it says
25 "Plaintiff's Exhibit 118." So "Inc. 500 Magazine, 211-," and

1 then it says "Plaintiff's Exhibit 118."

2 So all of those exhibits have been submitted to the
3 Government.

4 With respect to some of --

5 **THE COURT:** So you challenge the assertion that
6 they've stuck things you've never seen before in this
7 PowerPoint.

8 **MR. FLOWERS:** That's exactly right, Your Honor.

9 If I can also explain too, Your Honor. As Mr. Phelps
10 stated, they have not provided for us anything. I have no idea
11 what's in the PowerPoint.

12 **THE COURT:** All right. Well, this is a bench trial.
13 Let's just put up the PowerPoint, and if it's something that
14 hasn't been revealed, you can point out your position in your
15 opening statement.

16 **MR. FLOWERS:** It's the depositions that they're going
17 to be playing, Your Honor. I'll just say that.

18 **THE COURT:** All right. Let's go ahead. I'll be glad
19 to recognize the Plaintiff for opening statements.

20 **MR. FLOWERS:** Very well.

21 **THE CLERK:** Mr. Flowers, before you begin, are you
22 going to be moving around, and do you need a lapel mic?

23 **MR. FLOWERS:** I will be moving around, so I may need
24 one. Sorry about that.

25 **THE CLERK:** All right. Give me a moment.

1 **MR. FLOWERS:** Very well.

2 **THE COURT:** Mr. Flowers, you may proceed.

3 **MR. FLOWERS:** Thank you, Your Honor.

4 This case is about an American dream destroyed. This case
5 is about an American dreamer, Reddy Vijay Annappareddy.

6 Judge Anderson, Reddy came to this country in 1992 in
7 search of the American dream. By 1995, he had become a
8 pharmacist. As a pharmacist, he worked at Rite Aid. And he
9 had an idea, Judge Anderson, an idea that became his dream, and
10 that is Pharmacare. And the idea, Judge Anderson, was he knew,
11 by being a pharmacist at Rite Aid, that there was a need to
12 help out the least of these in our society, Judge Anderson,
13 with medication. And when I say "the least of these," I mean
14 the poor and the incapacitated.

15 Reddy went to the executives at Rite Aid and he told them,
16 "I've got an idea, here's how we can do better, here's how we
17 can help those who need it most." And, Judge Anderson, with
18 that idea, with Reddy's dream, they laughed.

19 And so Reddy left Rite Aid, started his own business
20 called Pharmacare. By 2011, Judge Anderson, Pharmacare was
21 worth \$50 million. Reddy did so well, Judge Anderson, that
22 Inc. 500 Magazine, in 2011, recognized Reddy for his work,
23 recognized Reddy for his dream. And they said this: "While
24 working as a pharmacist for Rite Aid, Reddy Annappareddy
25 presented a plan to executives on how the company to improve

1 services to poor and incapacitated customers."

2 They, the executives, Judge Anderson, laughed in his face.

3 So Reddy left and created Pharmacare.

4 The article goes on to say, Judge Anderson, that
5 Pharmacare, in 2011, was worth \$50 million. The article then
6 ends with Reddy's own words in which he says, quote, "Some
7 people thought it was too good to be true" -- "it" being
8 Pharmacare -- "but you have to have a dream."

9 And you can see, Judge Anderson, in the photo, it says,
10 "Dare to dream."

11 Judge Anderson, this case is about this man's dream, and
12 this case is about how the Government destroyed that dream.
13 The way they destroyed the dream, Judge Anderson, is that
14 Maura Lating, an FBI agent of 25 years, and Robert Mosley, an
15 OIG agent of 18 years, specializing in healthcare fraud, they
16 created a false affidavit. And that's the affidavit there at
17 Plaintiff's Exhibit 70. The Court has seen the affidavit in
18 many of the filings. That affidavit is false, Your Honor,
19 because it says Pharmacare is not a dream, but a fraud loss of
20 \$2.6 million. Not only did Agent Lating and Agent Mosley
21 create this false affidavit, they then misled the prosecutors
22 in this case. Not only did they create a false affidavit and
23 mislead the prosecutors, they then tricked the grand jury into
24 charging Reddy Annappareddy and taking down his business.

25 That, Your Honor, is how you destroy a man, a family, and

1 a business. That's how you destroy a dream.

2 And for destroying that dream, destroying that business,
3 Reddy Annappareddy has sued the federal government for
4 malicious prosecution.

5 The Court is very well aware that Reddy Annappareddy has
6 brought two counts of malicious prosecution, Counts 21 and
7 Counts 22, in the amended complaint. The Court is well aware
8 that malicious prosecution is brought against the Federal
9 Government under the Federal Tort Claims Act. The Court is
10 also well aware that of the four elements for malicious
11 prosecution, two of them the parties agree about. Element
12 number one, that is, was there a criminal proceeding brought
13 against this man. We agree about that. There was one. And in
14 element number four, and that is, did that criminal proceeding
15 end in a way favorable to Reddy. We agree about that.

16 The reason we are before this the Court, Judge Anderson,
17 is because we don't agree about elements two and elements
18 three.

19 Element two is, was there probable cause for what the
20 Government did. We say no; they say yes.

21 Element number three is did the Government act
22 maliciously. They say no; we say yes.

23 They are wrong, we are right. Because the Government had
24 ample chance, Your Honor, to get off this road of malicious
25 prosecution. They had at least five times, five stop signs, if

1 you will, Your Honor, to get off the road of malicious
2 prosecution.

3 The first stop sign was, the Government -- and I want to
4 be specific here, Agent Lating and Agent Mosley never dealt
5 with these quote/unquote, "whistleblowers," as they should
6 have. Had they dealt with the whistleblowers, that would have
7 been a time they could have stopped this prosecution and ended
8 the destruction of a dream. Instead, they stayed on the road
9 to malicious prosecution, blew past the first stop sign, until
10 they came to the second stop sign.

11 The second stop sign was this issue of the 14-day rule
12 fiction. Had Agent Lating and Agent Mosley figured out this
13 14-day rule fiction, they could have stopped this prosecution.

14 But because they blew past the second stop sign, they
15 continued on the road of malicious prosecution and came to the
16 third stop sign. There, Judge Anderson, they had a choice to
17 stop. They knew that the information they received from MEDIC
18 was information that was flawed. Rather, the information that
19 MEDIC needed was not complete. It was flawed. It was bad
20 math. They knew, particularly Agent Mosley, as the key health
21 fraud investigator, he knew that there was bad math. He didn't
22 raise his hand, stop the bad math, correct the bad math, and
23 get off this road of malicious prosecution.

24 The fourth stop sign. The fourth time, Judge Anderson,
25 again, when the Government, Agent Lating, Agent Mosley, even

1 Pam Arnold, who we'll talk about, they could have got off this
2 road of malicious prosecution. Again, they engaged in bad
3 math. They didn't add up the numbers correctly. And they
4 didn't because they wanted to kill the dreamer. The reason
5 that they did it is because they wanted to create the biggest
6 loss number they could to engage in this malicious prosecution.

7 Finally, Your Honor, the fifth time they could have
8 stopped at the stop sign, gotten off the road of malicious
9 prosecution, was if they had just looked at all the key
10 evidence in this case, so much so, Your Honor, that with the
11 Court's 30-hour time limit, we're not going to go through all
12 of the evidence that Agent Lating, Agent Mosley, Pam Arnold
13 disregarded. But we're going to hit the highlights.

14 The first stop sign, Your Honor, the whistleblowers. Two
15 whistleblowers in this case, Judge Anderson, you know them
16 well. Dennis Tokofsky, in the false Lating affidavit, he is,
17 quote, "CS1," unquote. Whistleblower number two, Lisa Ridolfi,
18 she is, in the false affidavit, CS number 2.

19 Dennis Tokofsky came in and met with the Government. And
20 right after he went to the Government, Judge Anderson, he went
21 and filed a *qui tam* complaint; that is, he went and told the
22 Government, "I want to be paid for reporting fraud." He didn't
23 wait.

24 Now, when this happened, Judge Anderson, Agent Mosley, the
25 OIG investigator, the one who had an expertise, a specialty in

1 investigating healthcare fraud, that should have been a red
2 flag for him; that this whistleblower wasn't driven by
3 righteousness and getting to the truth, but seemed to be overly
4 driven by money. But I don't want to begrudge a whistleblower
5 who receives money because, of course, that's what the law
6 allows. And if that was all we had, Your Honor, then perhaps
7 Agent Mosley -- we couldn't say he acted maliciously, but there
8 was more about this whistleblower.

9 In the complaint that the whistleblower filed, he said
10 that he resigned from Pharmacare when he was working with
11 Reddy. But, Judge Anderson, when you look at what he told the
12 unemployment office, he said he was terminated. Both stories
13 can't be true. He either resigned, or he was terminated.

14 Agent Mosley should have stopped and dealt with the fact
15 that this person is telling something which is not true. And
16 not only is he telling something that is not true, he's telling
17 something in Plaintiff's Exhibit 13, which goes to a federal
18 court. Agent Mosley, the investigator in this case of
19 18 years, a veteran, did nothing to deal with this
20 whistleblower who had lied.

21 **THE COURT:** What's the timing element of when he
22 applied for unemployment?

23 **MR. FLOWERS:** The timing element for when he applied
24 for unemployment, Your Honor -- the Court's indulgence, I'll be
25 able to tell you. April 2012. So he files the complaint,

1 obviously before the Maura Lating -- and all of this, I should
2 be very clear about this, Your Honor, everything that we're
3 talking about in closing predates July 23rd, 2013, when that
4 affidavit was filed, when this malicious prosecution was
5 brought. For the most part. Damages is a little bit
6 different. But for the most part, Your Honor, the information
7 I provide for the Court happens in that most important period,
8 before July 23rd, 2013.

9 Including that this whistleblower, Dennis Tokofsky, put in
10 his *qui tam* complaint that 70 percent of Pharmacare's
11 medications went undelivered. But when you look at the Lating
12 affidavit, it's about -- we've got 2 to 3 percent. It's
13 actually much less than that.

14 Here's the issue, Judge Anderson, Agent Mosley knew
15 better. Agent Mosley had the complaint, the *qui tam* complaint,
16 before the Lating affidavit was filed. Why didn't Agent Mosley
17 tell Agent Lating, "Hey, we've got to deal with the fact that
18 our whistleblower has way inflated a key figure here; that is,
19 how many of the medications were undelivered." Agent Mosley
20 never did anything about that.

21 You're going to read the complaint again, and you'll see
22 there's no mention in the complaint that the key whistleblower
23 inflated a key figure. And Agent Mosley and Agent Lating did
24 nothing.

25 The next problem that the Government, Agent Mosley, and

1 Agent Lating had, Your Honor, is that Dennis Tokofsky, the
2 whistleblower in this case, had an axe to grind against Reddy.
3 He was not a very good employee. And Agent Lating,
4 Judge Anderson, never even investigated that fact. Never
5 investigated that not only did Tokofsky have a financial
6 interest in killing the dream, but he had a grudge against
7 Reddy Annappareddy because he wasn't a good employee. And he
8 worked for Reddy Annappareddy. This was payback. And
9 Agent Mosley and Agent Lating knew it and said nothing about
10 it.

11 That's how you know, Judge Anderson, they acted
12 maliciously. Nowhere in the prosecution, the malicious
13 prosecution of Reddy Annappareddy, do they deal with these very
14 key problems with their very first whistleblower. That's the
15 first stop sign, and we're not even past the first stop sign
16 because there's another whistleblower, Judge Anderson, Lisa
17 Ridolfi.

18 And Lisa Ridolfi, as you see on Plaintiff's Exhibit 60,
19 not only did she want to be a whistleblower, Judge Anderson,
20 she was to be the whistleblower. She wanted to supplant Dennis
21 Tokofsky. She wanted to be paid more than him. Where in the
22 affidavit, where in the investigation did Agent Mosley or
23 Agent Lating say, "Wait a minute. Wait a minute. We need to
24 deal with -- we cannot trust the information that we're being
25 given here, because she is driven clearly too much by financial

1 interest, by a financial gain, by killing the dreamer." But if
2 that was all that they looked over, perhaps that would just
3 rise to the level of negligence.

4 We get to the level of malice because there's two other
5 things, Your Honor. First off, she applied for a job with the
6 very same stateside investigators that were investigating Reddy
7 Annappareddy. Agent Mosley, Agent Lating, the federal
8 investigators, never said, "Wait a minute. That's a conflict
9 of interest. Wait a minute. That's a problem." That would
10 have been yet another time, Judge Anderson, for them to get off
11 this road of malicious prosecution. But they pushed forward.
12 That's malice.

13 That's also a lack of probable cause because it shows that
14 their whistleblower cannot be trusted because she is, again,
15 trying to be paid not only by the whistleblower statute, but
16 also by the -- by working with the government.

17 And then finally, and perhaps most importantly,
18 Judge Anderson, Lisa Ridolfi wore a wire and went in to a
19 Pharmacare store where Reddy Annappareddy was working. The
20 hope, Judge Anderson, was that she would catch Reddy
21 Annappareddy saying, "Hey, don't reverse those medications.
22 Hey, this is how we engage in fraud." Judge Anderson, Lisa
23 Ridolfi, the whistleblower, wore this wire for months,
24 constantly listening to Reddy Annappareddy, and Reddy
25 Annappareddy didn't know that he was being recorded. And for

1 months, nothing incriminating came up on that wire. For
2 months, nothing that would have given probable cause for the
3 affidavit came up on that wire.

4 But here's the problem, Judge Anderson, all the while,
5 Lisa Ridolfi was telling the investigators that Reddy was
6 engaging in fraud, that Reddy was not reversing prescriptions.
7 And they said, "Well, if that's true, wear a wire, get him on
8 the wire." She did. And he didn't engage in fraud. And yet,
9 Agent Mosley, the healthcare investigator of 18 years, the FBI
10 Special Agent Maura Lating, 25 years as an investigator in
11 white collar crime, did nothing to say, "Wait a minute. Maybe
12 we've got the wrong person here. We have somebody on the
13 inside, yet we can't get them on the wire, how often does that
14 happen in a federal case?" And yet, they blew past this stop
15 sign, Your Honor.

16 Next stop sign they blew past, Judge Anderson, is this
17 14-day rule fiction. Judge Anderson, I think the photo here on
18 the opening is instructive. It's illustrative. On that photo,
19 you see a stop sign, and you see a road. Oftentimes, on a road
20 like that, you'll see a sign that says mile per hour, 35 miles
21 an hour. In other words, you can only go 35 miles an hour on a
22 country road like that.

23 But you look at that photo, Judge Anderson, and you don't
24 see that sign that says only go 35 miles per hour. You don't
25 see it because it's not there. You don't see it because just

1 like this 14-day rule was supposed to be there, it didn't
2 exist. Just like this 14-day rule was supposed to be a sign
3 that said, "Hey, if you don't return the medications within
4 14 days, you're committing fraud." That was a sign that was
5 given to Agent Mosley. And Agent Mosley looked for this sign,
6 looked for this rule, looked in the regulations, and found that
7 rule doesn't exist. That rule was created from his
8 whistleblower in whole cloth.

9 **THE COURT:** Let me jump in here. Wasn't there
10 something that we looked at on summary judgment about an
11 industry standard where other pharmacists also mistakenly
12 thought there was a 14-day rule; am I wrong on that?

13 **MR. FLOWERS:** Yes, Your Honor. You're absolutely
14 correct on that, Your Honor. But I move to the next slide.

15 The point here, Your Honor, is that certainly, there is
16 this idea of a 14-day rule. The problem, Your Honor, is that
17 the whistleblower, Tokofsky and others, talked about this
18 14-day rule. It didn't exist. So you can't use that as a data
19 point to say that Mr. Annappareddy engaged in fraud. But
20 that's what they did here, Your Honor.

21 And Mosley, as you can see in this email from
22 Maura Lating, on April 16th, 2013, she writes that,
23 "Robert Mosley is looking into the Medicare regs." Those
24 Medicare regs he was looking into, he was searching for that
25 14-day rule. That 14-day rule never appeared, Your Honor.

1 **THE COURT:** But there is a limitation, but it's a much
2 higher number, right?

3 **MR. FLOWERS:** That's exactly right, Your Honor.

4 **THE COURT:** What was the higher number?

5 **MR. FLOWERS:** I'm not clear exactly of the higher
6 number. Oh, now I am clear, given my client and my co-counsel.
7 It's 60, not 14.

8 And let me move to the next slide, Your Honor, if you're
9 done looking at this slide. Because this is the slide that
10 really matters, Your Honor. This is a draft of the false
11 affidavit that Maura Lating wrote. And this is so important,
12 Your Honor, because in this draft, they've got a little comment
13 bubble. And in the comment bubble, they are concerned about
14 Mosley looking into this 14-day rule.

15 Well, Your Honor, this fact that the 14-day rule doesn't
16 exist and that their whistleblower told them about that, that
17 never made it into that affidavit. Because had it made it into
18 that affidavit, Your Honor, they don't have probable cause --
19 or let me rephrase that. Probable cause comes into question.
20 And these very skilled agents kept that out of the affidavit,
21 but they knew to look for it. Because in a previous version of
22 the affidavit for the search warrant, they've got comments on
23 it. "We got to figure this out." And they figured it out.
24 They figured that it was false. There is no 14-day rule. And
25 instead of dealing with Tokofsky, who had told them about that,

1 they pushed forward to the next stop sign, where they should
2 have stopped and did the math.

3 Your Honor, Agent Mosley, again, he's the healthcare
4 investigator. He's the expert. He's been doing it for
5 18 years before he came into this investigation to investigate
6 Reddy. He knew about this math.

7 Let me explain it to you this way. Your Honor, if I have
8 a fruit stand, and I'm going to have kind of a fruit stand
9 franchise like Pharmacare. And in my fruit stand -- I've got
10 one fruit stand, we'll call it fruit stand A. And in fruit
11 stand A, I sell mangoes; I sell oranges; and I sell bananas.

12 And then, Your Honor, in fruit stand B, in my franchise of
13 fruit stands, I sell mangoes; I sell oranges; I sell bananas.
14 If someone were to come and ask me, "Well, tell me about your
15 inventory of fruit, Mr. Flowers. How many pieces of fruit do
16 you have in your franchise?" Oh, I'd say -- I'd do the math,
17 and I'd say, "I've got six pieces of fruit."

18 Let me give you a second scenario, Your Honor. I'd have
19 that same fruit stand business and that same franchise, this
20 time, in fruit stand A, I've got the same fruit. I've got
21 mangoes; I've got oranges; I've got bananas. In my second
22 fruit stand, fruit stand B, and here's the curve ball, I only
23 have mangoes; and I only have oranges. And so what fruit stand
24 B does, calls over to fruit stand A, and says, "Listen, I'd
25 like to get a banana from you." And so what fruit stand A

1 does, is it goes ahead and transfers a banana over to fruit
2 stand B.

3 So if someone came to me and said, "Well, Mr. Flowers, how
4 many pieces of fruit do you have in your fruit franchise for
5 this second scenario?" Five. Because the banana came from
6 fruit stand A and went to fruit stand B.

7 What Agent Mosley did not do, Judge Anderson, was that
8 basic math. Agent Mosley did not account for the transfers.
9 And because he didn't account for the transfers between
10 Pharmacare stores, he was able to inflate the number of loss.
11 That was done maliciously. Because Agent Mosley, again, is not
12 an investigator who is a rookie. He is an 18-year
13 investigator. He knew better. He should have done better.
14 Because he didn't, that's malice. That's why that number
15 there, Your Honor, is \$2.6 million of loss, because they didn't
16 account for the transferring of medications between pharmacies.
17 Or, as I've explained it, the transfer of fruit between fruit
18 stands.

19 And, Your Honor, this exhibit, Plaintiff's Exhibit 42,
20 shows that the Government knew about this transfer problem.
21 While there were agents like Maura Lating and Robert Mosley and
22 Pam Arnold who were engaged in malicious prosecution, there
23 were some good lawyers on the case. One of them was
24 Jeremy Dykes. Jeremy Dykes writes this email on May 17th,
25 2013.

1 And what's most important here are three things. First,
2 is that it comes from Jeremy Dykes, who is one of the lawyers
3 in the case, Judge Anderson. The subject says, "In-and-out
4 analysis." Judge Anderson, you can understand that as
5 transfers, or what I've called the transfer problem.

6 The next thing you need to know about this particular
7 email, again, Plaintiff's Exhibit 42, is that this email went
8 to Robert Mosley. Robert Mosley should have known better. He
9 received this email. The email is then forwarded by Pam
10 Arnold.

11 And when Pam Arnold sees the email, who is the state
12 investigator in this case, she writes, "This is not what we
13 hoped for." Judge Anderson, that's malice. When you're an
14 investigator and you're investigating an alleged crime, you
15 don't hope for anything. You follow the facts where they go.
16 If there's a crime, you bring a charge. If there's not a
17 crime, you walk away.

18 Pam Arnold wrote, "This is not what we hoped for." In
19 other words, this transfer problem here that reduces the loss
20 significantly, this is a problem. And if they were acting from
21 a place of good faith, instead of malice, that would have been
22 a stop sign. They would have walked off the road of
23 prosecution. Instead, they stayed on this road of malicious
24 prosecution.

25 Your Honor, so important are those transfers, that it

1 reduces that number by 75 percent. Pam Arnold knew about it.
2 Robert Mosley knew about it. Maura Lating knew about it. And
3 they did nothing about it. Because they knew to do something
4 would mean to decrease the loss. They knew to do something
5 would mean that they ought not prosecute Reddy Annappareddy.
6 They knew to do something would mean that they ought to let the
7 dreamer dream.

8 **THE COURT:** Let me jump in here. I'm sure Mr. Phelps
9 is going to stand up and say, "Well, even 25 percent is a
10 loss."

11 **MR. FLOWERS:** Absolutely, Your Honor, even 25 percent
12 loss is a loss. But the problem is, Your Honor, how many stop
13 signs do they have to blow past where the loss keeps getting
14 down lower and lower and lower. When you say, "You know what,
15 they're targeting this person." Because other people, when
16 they engage in these types of investigations and the loss is so
17 small, they don't bring a prosecution. Why here? I tell you
18 here because they were engaged in malice. They seized on this
19 man and went after this man despite stop sign, after stop sign,
20 after stop sign. Despite time and again, they could have
21 walked away and said, "We're not going to bring a prosecution."
22 And if that were all, then perhaps there's an argument that
23 they didn't engage in malice. But that's not all.

24 We now have to deal with this MADAP issue. Again, bad
25 math. This Court is very well aware, when you pay for

1 medication, you have primary payors, you have secondary payors.
2 MADAP was a secondary payor. All that means is that when a
3 person comes in to buy their medication, they use the primary
4 payor; the primary payor can either pay all of it or not all of
5 it; MADAP takes care of the balance. But, at the end of the
6 day, only one medication is dispensed to the patient.

7 What Mosley did was he didn't take out the numbers from
8 MADAP. He -- let me say it this way. He actually took the
9 numbers from MADAP and counted them as if they were the primary
10 payor. So he double counted. Mosley knew about the duplicate
11 MADAP claims. And MADAP, as the Court is very well aware, is
12 the Maryland AIDS Drug Assistance Program.

13 And that's important, Your Honor, because the Maryland
14 AIDS Drug Assistance Program pays for very expensive drugs.

15 Judge Anderson, Mosley knew that as he looks at the
16 universe of drugs that Pharmacare was dispensing, he focused on
17 the most expensive drugs. In focusing on the most expensive
18 drugs, Mosley knew he would have to account for MADAP, and he
19 didn't. And he never told MEDIC -- again, as the Court is very
20 well aware, the state team was working with MEDIC to understand
21 the inventory in Pharmacare. MEDIC, this government
22 contractor, needed to know who are the primary payors, who are
23 the secondary payors. Mosley never told them about MADAP.

24 To be clear, Mosley had many conversations with MEDIC.
25 But Mosley never stopped and said, "Hey, we got a MADAP problem

1 here. Hey, how are we accounting for MADAP?"

2 And, again, Mosley knew, by not accounting for MADAP, that
3 would increase the loss. Because that deals with the most
4 expensive drugs, the HIV drugs or the Med-4s. As the Court is
5 very well aware, the Med-4s were what Pharmacare called this
6 package of expensive drugs.

7 Your Honor, I finally arrive at the fifth stop sign. The
8 fifth time, Judge Anderson, when Agent Lating, Agent Mosley,
9 could have got off this road to malicious prosecution.

10 And I want Your Honor to look at this picture here because
11 this is not just a stop sign, this is a barricade. And they
12 ran through this barricade because of all of the key evidence
13 that you're going to hear about, that they simply disregarded,
14 intentionally, maliciously and without making a mistake.

15 Three pieces of evidence I want the Court to consider.
16 And there's more. But three key pieces of evidence,
17 Judge Anderson, that the Court must consider.

18 First off, the logs. Mosley and Lating knew that the logs
19 would show that the patients actually received their drugs.
20 Mosley and Lating never went to their whistleblower to get
21 those logs. Key evidence, disregarded.

22 The audio recording. I've already talked a little bit
23 about this Your Honor, but the audio recording is so key
24 because when Ridolfi goes in and is wired and tries to get
25 Reddy Annappareddy on the wire saying something incriminating,

1 saying something that would show he engaged in fraud, saying
2 something that they could put in the Lating affidavit, because
3 none of this evidence is in the Lating affidavit, it never
4 happened. And yet, not Agent Mosley, not Agent Lating followed
5 up with that. That was a time for them to get off this road of
6 prosecution. Because if you listen to the target for months
7 and he never incriminates himself, he never engages in fraud,
8 that's not probable cause.

9 And then, finally, Your Honor, as far as key evidence that
10 was disregarded.

11 MEDIC, again, the people that the investigators were
12 working with, told the investigators, told Mosley specifically,
13 "You can't use our information to determine government loss."
14 MEDIC told the Government, "You cannot use our information to
15 determine government loss." Well, what did Mosley do, what did
16 Lating do, they used their information to determine government
17 loss.

18 Plaintiff's Exhibit 40 brings this home. Plaintiff's
19 Exhibit 40, Judge Anderson, is a letter from MEDIC on May 9th,
20 2013, to Robert Mosley. In that letter, MEDIC tells Robert
21 Mosley, the key case agent, the information provided does not
22 represent the impact to the government. In other words, the
23 information provided does not represent the loss to the
24 government. The letter goes on. "Once you reviewed the
25 data" -- the information we provided -- "you may determine,

1 Agent Mosley, that a calculation of estimated impact to the
2 government that is loss is necessary. If so determined, please
3 contact me."

4 Agent Mosley never contacted MEDIC. Instead, what
5 Agent Mosley did, working with Agent Lating, is they put that
6 \$2.6 million loss figure into the affidavit, knowing that
7 MEDIC, the experts on this, told them not to. That is malice.
8 That is also why this affidavit doesn't have probable cause.

9 But, Your Honor, don't take it from me, the lawyer in the
10 case, the way that I see the documents, the way that I see the
11 evidence. Listen to MEDIC's own representative about what she
12 said what the government should and should not do with MEDIC's
13 information.

14 Take a listen, Judge Anderson.

15 (Video playing.)

16 **MR. FLOWERS:** It would be inaccurate to represent that
17 the MEDIC invoices -- in other words, the MEDIC information --
18 did represent the loss to the government.

19 Your Honor, the Government could have got off this road to
20 malicious prosecution at least five times. Five different
21 ways. It chose not to. That is malice. That is a lack of
22 probable cause. That is why they are liable. But, Your Honor,
23 the consequences of the Government's action were significant.

24 July 23, 2013, that is the day for Reddy Annappareddy that
25 will live in infamy, because that is the day that they executed

1 the search warrant based on the Maura Lating affidavit on, not
2 only his business, but his own home where his family was. And
3 on that day, shortly thereafter, he was charged with fraud.
4 Shortly thereafter, he attempted suicide.

5 Reddy Annappareddy comes before this Court having fought
6 for his reputation, having fought for his dream for 10 years.

7 Judge Anderson, look out. You can see there are friends
8 and family here that support Reddy Annappareddy. But you know
9 who's not here, Judge Anderson, his wife; his oldest child, his
10 daughter; and his son. They're not here because the trauma and
11 the pain and the turmoil that they have seen this man go
12 through, they can't bear to sit in another courtroom and hope
13 that the Court gets it right. Because for so many times over
14 those 10 years, it hasn't gotten it right. That's number one.

15 And number two -- I only have two points there -- is that
16 for them to hear over and over again what being wrongfully
17 prosecuted has done to their father, not only did he attempt
18 suicide, but also, Your Honor, he was crushed. Because when
19 his father died, Veka Reddy, some five years after the search
20 of his business, the bringing of these charges, when his father
21 died, because of this case, he couldn't go back to India and
22 bury his own father. That's a picture of Veka Reddy when his
23 son won the Ernst & Young award, yet again, for Pharmacare.
24 Next to Veka Annappareddy, is, obviously, Reddy. And then
25 there's his mom, Satya.

1 Because of this case, Judge Anderson, Reddy can't go back
2 to India. Because of this case, he can't get a Green Card to
3 go back not only to see his father, but also to see his mother.
4 When his father died, he couldn't go back and be there at the
5 funeral, back in 2018. And his mother is there now. And she's
6 there alone, without her son, without her dreamer, because of
7 this case, because of what Maura Lating, Agent Mosley,
8 Pam Arnold and the government did starting on July 23rd, 2013.

9 **THE COURT:** The charges were dismissed with prejudice.

10 Why could he not travel?

11 **MR. FLOWERS:** Because the Government, to this day,
12 Judge Anderson, would not give him a Green Card. And we know
13 it's because of this case because his wife, Seeta, has a Green
14 Card, and she can go back, but he can't. The only difference
15 between Reddy and his wife is this case. If that were the only
16 damage, that's enough. But there's more, Your Honor.

17 Ernst & Young, when he was accused of fraud, they
18 rescinded that award. They said, "You know what, Pharmacare,
19 it must be a fraud." Pharmacare is no longer an entity.

20 And because of this case, Judge Anderson, Reddy
21 Annappareddy walks around with the Scarlett C, analogous to the
22 Scarlett A that Hester Prynne had to wear in the Scarlett
23 Letter in Nathaniel Hawthorne's great book. The Scarlett C
24 that Reddy Annappareddy has to wear is the Scarlett C of a
25 conviction that was wrong, a conviction that was vacated.

1 Because Reddy Annappareddy now is starting a business in
2 Washington and trying to raise money for the business he
3 started in Washington, Judge Anderson. And every single time
4 he goes to an investigator who wants to give him 1 million,
5 10 million, \$50 million, he has to explain to that investor, "I
6 was convicted, I have a Scarlett C. Yeah, it was wrong,
7 nothing came about it for your purposes." But do you know,
8 Judge Anderson, how much money he has lost to build another
9 business, to have another dream because of this case? That's
10 damage. That's why July 23rd, 2013, was D-Day.

11 And then, Your Honor, there's more. You'll hear from
12 Reddy Annappareddy in this trial. But when they came and
13 executed that search warrant at his business, they destroyed
14 the business, they destroyed the man, they destroyed the family
15 so much so that he was unemployed. This is a man who, in
16 2011 -- don't take it from me, take it from
17 Inc. 500 Magazine -- ran a business of \$50 million. Now, in
18 2013, he's unemployed.

19 You know what that means, Your Honor, when you're
20 unemployed, and like, in Reddy's case, his daughter was having
21 a birthday, Reddy had no money. And the best that he could do
22 for his daughter who was having a birthday, Judge Anderson, was
23 take her to McDonald's. That's the damage this case has
24 caused.

25 And while Reddy was unemployed, out of pride, dignity,

1 grace, he never collected unemployment.

2 Dennis Tokofsky, the whistleblower in this case, when he
3 was unemployed, he did.

4 Reddy didn't.

5 Your Honor, the evidence in this case is clear that the
6 Government engaged in malicious prosecution. I urge this
7 Court, Your Honor, to walk through the evidence. Stop at the
8 stop signs. Don't do what they did. And Judge Anderson, once
9 you walk through the evidence in this case, you will find, you
10 must find the Government is liable for malicious prosecution.
11 And while you can't bring back that dream, Your Honor, it is
12 crumbled, it is ripped, it is torn, but a finding that the
13 Government is liable will at least allow the dream to be a
14 dream deferred.

15 Thank you, Your Honor.

16 THE COURT: Thank you, sir.

17 Be glad to hear the Government's opening statement.

18 MR. PHELPS: Yes, Your Honor. Thank you, Your Honor.

19 One thing you didn't hear during that presentation was he
20 didn't do it. Mr. Flowers never said he's innocent. That's
21 the first line of their complaint, Your Honor. It says he's
22 innocent. And for 45 minutes, you didn't hear that once.
23 There's a reason for that.

24 Your Honor is aware that this case began as a state
25 investigation. And I have some of, but not all of the state

1 personnel involved in the investigation. Investigator
2 Laurie Gutberlet, Pam Arnold, Assistant Attorney General Jeremy
3 Dykes, and Assistant Attorney General Catherine Pascale.

4 Your Honor, I have a star next to Laurie Gutberlet's name
5 because there is no single person who contributed more to the
6 information in the Lating affidavit than Laurie Gutberlet. She
7 did the vast majority of the interviews. Your Honor may recall
8 from our summary judgment briefing, we had a litany of
9 interviews listed, and each time, it said no federal agent
10 participated. And that's not to point the finger at
11 Ms. Gutberlet. Her work product was excellent. Her
12 investigation was thorough. She interviewed witnesses multiple
13 times. And she didn't just accept what the witnesses said is
14 true; she followed up.

15 When Lisa Ridolfi and Dennis Tokofsky provided her with
16 patients and customers and prescriptions who had suspected
17 fraudulent billing, she followed up to verify it.

18 Laurie Gutberlet has approximately 100 pages of interview
19 reports just on Lisa Ridolfi. Laurie Gutberlet is a 25-year
20 veteran of the Baltimore City Police Department, Your Honor.
21 She knows how to investigate.

22 One thought experiment for you when you hear Laurie
23 Gutberlet testify later today, is ask yourself, did Lisa
24 Ridolfi really pull one over on Laurie Gutberlet? There's no
25 chance.

1 The case first became a civil federal investigation upon
2 filing of the *qui tam*, and it later became a federal criminal
3 investigation in January of 2013. And here's some, but not
4 all, of the personnel who were involved. Special
5 Agent James Ryan for DCIS. He represents the interests of the
6 TRICARE program. Robert Mosley, HHS OIG. Special
7 Agent Maura Lating. And AUSA's Mike DiPietro.
8 Sandy Wilkinson. And Special Assistant U.S. Attorney
9 Cathy Pascale, who became designated as a special assistant
10 U.S. Attorney for the federal investigation.

11 The name I have starred here for you, Your Honor, is
12 Assistant U.S. Attorney Mike DiPietro. He's now a judge in
13 Baltimore City Circuit Court. He was the civil AUSA who was in
14 charge of investigating the *qui tam*. And as it related to the
15 division of responsibility between the civil division of the
16 U.S. Attorney's Office and the criminal division of the U.S.
17 Attorney's Office, the civil division and Mr. DiPietro were in
18 charge of the damages.

19 And so you're going to see a number of exhibits, you're
20 going to hear from Mr. DiPietro himself, where it's very clear
21 that Mike DiPietro is the one who's driving the bus on the
22 damages calculation. And that's not surprising, Your Honor.
23 It's very common for agents to work at the directions of the
24 lawyers in an investigation.

25 And so under the Federal Tort Claims Act, there's no

1 liability arising out of the conduct of lawyers. It has to
2 arise out of agents. So they have this litigation need to pin
3 all of the conduct on Agent Mosley with respect to the loss
4 calculation, and that's simply not the way it happened.
5 Agent Mosley was, at all times, working under the direction of
6 the rest of the team. And particularly, as it relates to the
7 damages, AUSA Michael DiPietro. And to a lesser extent, Your
8 Honor, Assistant Attorney General Jeremy Dykes and Catherine
9 Pascale.

10 If you see a substantive email substantively probing,
11 questioning, evaluating the loss in this case, the email is
12 going to come from Mike DiPietro or, potentially, Jeremy Dykes
13 and Cathy Pascale.

14 What the investigative team did. These are all the things
15 they did. And these are normal things that you would expect to
16 occur in any criminal investigation, and they're cited for that
17 basic proposition. This is normal. Every case is hard. Every
18 case is unique, particularly in the white-collar space. But
19 the investigative team undertook normal, ordinary investigative
20 steps.

21 I cite something as mundane as a mail cover, because when
22 you execute a search warrant, you have to know, at the end of
23 the day, that a business is actually located where you say it's
24 located. And these are some of the ordinary, normal things
25 that law enforcement did in this case because they were just

1 doing their job.

2 This is what they found. Corporate officers in name only.
3 Wayne Dyke was not really the CEO of Pharmacare. Dennis
4 Tokofsky was not really the chief operating officer of
5 Pharmacare. Mary Sue Cramer was not really the compliance
6 officer at Pharmacare.

7 Vulnerable employees. A lot of Mr. Annappareddy's
8 employees were here on the H1B visa program, which meant that
9 if they weren't employed by Pharmacare, they had to return to
10 their home country. And that gave him significant leverage
11 over them. In addition to the H1B visa program, they lived in
12 houses that he owned. They drove cars that he gave them.

13 Lisa Ridolfi was, herself, one of vulnerable employees,
14 Your Honor. She have had been out of the workforce for
15 12 years and was going through a divorce and needed money to
16 help raise her son.

17 Vulnerable patient population. Your Honor, these
18 patients, particularly in the Baltimore City area, AIDS
19 patients, antipsychotic patients, hepatitis patients, it's a
20 transient population. They're in and out of homelessness.
21 They're in and out of hospitals. They're in and out of jails.
22 And they're not checking their EOBs at the end of the month.
23 And Mr. Annappareddy used that fact to his advantage.

24 I'll just pivot to something that Mr. Flowers mentioned in
25 his opening statement. Mr. Annappareddy apparently pitched

1 this scheme to Rite Aid, and Rite Aid wouldn't go for it. Go
2 figure. Rite Aid wouldn't offer free delivery to patient that
3 you can't find. That's what Mr. Annappareddy was doing,
4 offering free delivery to patients that he couldn't find. Yet,
5 somehow, he had one of fastest growing businesses in the
6 country.

7 Late night billings. Your Honor, you're going to hear
8 that automatic refills is perfectly normal, you're allowed to
9 do it, and that's fine. But that removes any context from what
10 happened here, which is that Lisa Ridolfi is excused from the
11 pharmacy at the end of the night and says, "Okay, Ms. Ridolfi,
12 you can go home." Which means Sri is here now. Reddy is here
13 now. And so they stayed up late billing on New Year's Eve, at
14 the end of the month, to try to get the billings as high as
15 possible. Yet, of course, when those billings don't get
16 reversed, that's Lisa Ridolfi's fault.

17 Bins of undelivered prescriptions. Your Honor, every
18 witness reported it. There's pictures of it all throughout
19 Laurie Gutberlet's file, and, of course, the nonreversal of
20 undelivered prescriptions.

21 I'll talk a little bit about Lisa Ridolfi, Your Honor.
22 Her last name is now Guy; she's since gotten married. She was
23 a reliable witness. She was an experienced pharmacist. She
24 had experience at Giant, F & M, and Target. But she had been
25 out of the workforce for 12 years, and she needed a job because

1 she was going through a divorce. She's reliable, Your Honor,
2 in part because her story is consistent with every other
3 eyewitness.

4 Lisa Ridolfi's account is consistent with Caitlin
5 Biemer's, with Dennis Tokofsky's, with Mary Sue Cramer's, with
6 Nikkia Dansbury's, with the Blomquists's, with the customers,
7 with the patients, with Richard Hiller.

8 I can't help but notice and note that in Baltimore City,
9 having the problems that we do, violent crime in this city,
10 what a luxury it would be to have as many eyewitnesses to a
11 crime as we have in this case.

12 To return to Laurie Gutberlet, Your Honor. She didn't
13 just accept the information that Lisa Ridolfi said is true.
14 She didn't just say, "Okay, you're recording it, that's fine."
15 No, she verified it.

16 We've told you about customer TP before and the
17 Blomquists. These are patients that were identified for Laurie
18 Gutberlet by Lisa Ridolfi, and Laurie Gutberlet verified that
19 what Lisa Ridolfi was telling her about suspected fraudulent
20 billing was true. And, in fact, particularly as it relates to
21 the Blomquists, they found that the fraud was far more
22 extensive than they even knew.

23 Lisa Ridolfi did not have an undisclosed financial
24 interest, Your Honor. They make a big deal about this letter
25 that Lisa Ridolfi sent to Judge Sullivan, who's, by the way,

1 the judge who authorized the search warrants in the first
2 place. She was having difficulty getting in her contact with
3 the lawyer, and so she was directed to send a letter to the
4 judge. And so she sends a letter to the judge and says, "Hey,
5 I have some questions for my lawyer, and how I can be the
6 whistleblower." But she never references filing a *qui tam*.
7 She never did file a *qui tam*. And Maura Lating is going to
8 tell you that she never even saw the letter before seeking the
9 search warrant affidavit.

10 And, you know, the Dennis Tokofsky *qui tam* was disclosed,
11 Your Honor. The investigative team is not afraid to disclose a
12 witness's financial interest in the outcome. If Lisa Ridolfi
13 had a real financial interest in the outcome and the team knew
14 it, it would have been disclosed.

15 And she did not hide medications to prevent reversals,
16 Your Honor. They kind of capitalize on connotation associated
17 with the word "hide," to say that she was hiding prescriptions
18 so that they couldn't be reversed. She's recording herself
19 making this statement, Your Honor, she's not hiding anything.
20 And she's having the conversation with the people who would be
21 doing the reversals in the first place. She wants to hide it
22 from Mr. Annappareddy so he doesn't yell at her, because he
23 doesn't want evidence of his criminal scheme sitting in the
24 middle of the floor in his pharmacy.

25 Your Honor, this tells you everything you need to know

1 about the case, quite frankly. Wayne Dyke, the CEO of
2 Pharmacare, 40 years of experience in the pharmacy industry,
3 Annappareddy will make Ridolfi a scapegoat. Tells you
4 everything you need to know about this case.

5 Dennis Tokofsky, was the chief operating officer of the
6 company. According to Plaintiff's counsel, he was a bad
7 employee. It's going to be a theme throughout this case, Your
8 Honor, that Mr. Annappareddy seems to only hire bad employees
9 and liars. Mr. Tokofsky was a bad employee, even though he had
10 experience at CVS and Rite Aid. Again, Mr. Tokofsky's account
11 is consistent with every other eyewitness. Laurie Gutberlet
12 did not accept Mr. Tokofsky's account as true, just because he
13 said it. She did work to verify that what he said was true.
14 Again, ask yourself, do we think Dennis Tokofsky pulled one
15 over on Laurie Gutberlet after you hear Laurie Gutberlet
16 testify? No chance.

17 And his *qui tam* was disclosed to the magistrate. Right.
18 Nobody was being secretive or hiding any financial motive that
19 the witness may have had. It was disclosed.

20 The 14-day rule. Your Honor, they told you in opening
21 statement that the 14-day rule was fabricated out of whole
22 cloth when, in fact, every experienced employee that worked at
23 Pharmacare said that prescriptions needed to be reversed within
24 14 days. And there is inconsistency among the witnesses as to
25 whether it's a federal law or an industry standard, but the

1 search warrant affidavit doesn't take a position either way.
2 The search warrant affidavit just says required, and that's
3 what every witness told them to that point. And so the idea
4 that it's actually not 14 days, it's 60 days, they've got no
5 evidence that Mr. Annappareddy was emailing or telling anybody,
6 "No, no, no. You guys are wrong on the 14 days, it's actually
7 60 days. As long as you reverse within 60 days, it's okay."
8 That evidence doesn't exist.

9 Again, Your Honor, it's, frankly, all a bit -- kind of a
10 distraction. He was stealing money. He was not delivering
11 prescriptions and then not reversing them, not after 14 days,
12 not after 60 days, not ever. It could be 14, it could be 60,
13 it doesn't matter.

14 So let's talk about MEDIC 1495, Your Honor, and why MEDIC
15 1495 was not materially false.

16 The only error that they've identified, Your Honor, is an
17 unquantified risk of duplication involving the MADAP program,
18 the AIDS drugs.

19 And so Your Honor made the point at the summary judgment
20 hearing that, well, how could it not be material if the
21 Government consented to a new trial after the criminal case?
22 And the reason is two-fold, Your Honor. In the criminal case,
23 the error was computed to the pill. We don't have that here.
24 We just have an unquantified risk of duplication.

25 And the second thing, Your Honor, and I'll address this

1 later, but there were more problematic claim sources included
2 in the Government's trial damages than were included in MEDIC
3 1495. The only duplication error in MEDIC 1495 is related to
4 MADAP, the AIDS program. There are far more sources of errors
5 that were in the Government's trial damages. So again, why is
6 this different than trial damages? There's less problematic
7 data sources involved. Again, the duplication risk is limited
8 to AIDS drugs. There's lots of shortages of expensive
9 psychotics and other drugs that were shown in MEDIC 1495, and
10 those shortages are 100 percent accurate.

11 It was not inaccurate to report individual store totals.
12 So they think that the Government should abrogate all of the
13 totals across all of the stores; and, in fact, the Government
14 did that. It's in the search warrant affidavit. There are
15 aggregate totals in the search warrant affidavit. The
16 Government also reported individual store totals. And it
17 doesn't make it mathematically inaccurate to report the
18 individual store totals, Your Honor.

19 I'd love to stress test the fruit delivery stand analogy,
20 Your Honor. There's anecdotal evidence that Mr. Annappareddy
21 transferred drugs among stores. But let's talk about if that
22 is, in fact, the case, if we were required to give him credit
23 across all of his stores for all of the transfers, there's not
24 two fruit stands, Your Honor, there's nine. And they're not
25 located down the street where you put a basket of fruit on the

1 back of your bicycle and you take it to the other location.
2 They're in Reading, Pennsylvania, and Greensboro,
3 North Carolina, and everywhere in between. If he's
4 transferring all of these drugs across all of these pharmacies,
5 he's got the most inefficient business known to man; yet, he's
6 somehow super successful, article in magazine. They can't have
7 it both ways.

8 It's a conservative analysis, Your Honor. MEDIC 1495 is a
9 model. There are things it does and does not account for, and
10 the things it does not account for provide a profound benefit
11 to Mr. Annappareddy in the analysis. A huge source of Medicaid
12 claims in the state of Maryland are administered by managed
13 care organizations, or MCOs.

14 MCOs are not included in MEDIC 1495. A huge source in the
15 in-and-out analysis is not in MEDIC 1495, which has the effect
16 of lowering the damages. And this is disclosed in the search
17 warrant affidavit. We did not include these claim sources.
18 When we do, the damages will go up, and that's 100 percent
19 right.

20 Loss is not an element of the crime. Your Honor, the
21 government -- the federal government doesn't have a habit of
22 bringing kind of nickel-and-dime cases, but, at the end of the
23 day, what does the model have to do with the patients that
24 can't get their prescriptions because they've been billed to
25 the max on their refills, and they don't have anymore available

1 to them that they know they never received? What does the
2 model have to say about the bins of undelivered prescriptions?

3 So, Your Honor, they make a whole lot about this impact
4 language, "This does not represent the loss to the government."
5 This is boilerplate language that's buried at the bottom of a
6 template cover letter that no one -- it clearly didn't resonate
7 with anybody at the time. There's no email discussion, "Hey,
8 guys, we got these damages figures, but we have this language
9 in the cover letter that seems to say we can't use any of the
10 information we just obtained." It doesn't make any sense, Your
11 Honor.

12 We asked Lori Cannata, she's Lori Gillman in the
13 documents, how the impact analysis differed from the work that
14 MEDIC did, and she didn't know.

15 Again, Your Honor, what was the purpose of doing the MEDIC
16 analysis in the first place? This is Government's Exhibit 37.
17 This is from Pharmacare at Plumtree. All of the dollar figures
18 in red are losses and shortages reported by the MEDIC. What
19 are we supposed to do with this information? This was provided
20 for the government specifically to use in the search warrant
21 affidavit.

22 And if you need anymore proof of that, Your Honor, I show
23 you Defense Exhibit 38. It's an email from Don DeGroff, the
24 senior most member of the MEDIC team, to Robert Mosley. This
25 email is eventually forwarded to the rest of the team.

1 "Robert, as promised, all of the invoice reviews have been
2 completed." He then provides the shortage figures for each of
3 the pharmacies.

4 Oh, sorry.

5 This is the email, Your Honor, Defense Exhibit 38. And
6 this is an email from Don DeGroff, the most senior member of
7 the MEDIC team, and he provides a listing of dollar losses
8 associated with each pharmacy. And he says in the last
9 paragraph, "Hope this lack of detail is sufficient for the time
10 being, as I know you are trying to draft the search warrants."
11 The senior most member of the MEDIC team is providing the MEDIC
12 analysis to the team for use in the search warrant. That was
13 the whole reason they did the analysis in the first place, Your
14 Honor. So if you're a member of the investigative team, and
15 the senior most member of the MEDIC is telling you "Here, use
16 these numbers," who are you going with, the actual text of the
17 MEDIC, or are you going to go with some boilerplate language at
18 the end of a cover letter?

19 Talk about Robert Mosley, Your Honor. He did not know
20 that MADAP overlapped with Medicare. They said that he did.
21 He didn't. There's no document that says he did. He could not
22 perform the deduplication himself, and no one thought he could.
23 You would think that Plaintiff's counsel is actually counsel
24 for Ms. Wilkinson and Ms. Pascale. And Ms. Wilkinson and
25 Ms. Pascale are going to say, "Oh, Robert deceived me. I

1 thought Robert was doing all the deduplication of the data
2 himself." Your Honor, Robert Mosley cannot deduplicate data.
3 He never could. No one thought he could. Ms. Wilkinson is
4 going to tell you that. Ms. Pascale is going to tell you that.
5 Mr. DiPietro is going tell you that. Everybody is going to
6 tell you they were not expecting Robert Mosley to deduplicate
7 data.

8 As I say here, AUSA Mike DiPietro was in charge of the
9 damages assessment, and Agent Mosley acted as facilitator.
10 They said he was an expert. He wasn't an expert, Your Honor.
11 He was a facilitator between the team and the MEDIC. And I
12 have an email to illustrate that, Your Honor.

13 This is an email, it's Defense Exhibit 31. It's an email
14 from the MEDIC to Robert Mosley. And it's from Lori Gillin.
15 It says, "I have processed the Medicaid FFS data." FFS is
16 fee-for-service. It is money that is paid directly by the
17 Medicaid program, not through a managed care organization. And
18 she says, "I am currently reviewing the Maryland MCO data and
19 have a few questions." And the questions are listed below.
20 And Robert Mosley sends those questions about Medicaid to the
21 Medicaid Fraud Control Unit and Jeremy Dykes. When he gets
22 answers, he sends them back to the MEDIC. And says, "Hello,
23 Lori and Melissa, here are the answers I received regarding
24 your questions." He's acting as a transparent pass-through to
25 get the MEDIC the information that they need. He's not keeping

1 secrets. He's not hiding anything.

2 But let's look at one layer deeper, Your Honor, into this
3 email chain. This exchange is what causes the MEDIC to decide
4 not to use the MCO data in MEDIC 1495. This has the effect of
5 significantly lowering the loss calculation. They accuse
6 Robert Mosley of keeping secrets to inflate the damages when,
7 in fact, he is facilitating discussion that ultimately causes
8 the damages to go down. It's the opposite of what they say.

9 Your Honor, a bit about Agent Lating. She was the primary
10 drafter of the search warrant affidavit, although it was a team
11 effort. You're going to hear from Agent Lating about all of
12 the team meetings that they had where they went paragraph by
13 paragraph through the affidavit to make sure everything was
14 correct. She's going to tell you how she met frequently with
15 Laurie Gutberlet, particularly when she found out that
16 Laurie Gutberlet was leaving the Medicaid Fraud Control Unit to
17 make sure that she had downloaded all of her knowledge. And
18 she's going to tell you, like I think Your Honor is going to
19 perceive, that Laurie Gutberlet and her work product were very
20 impressive. There is no evidence that Agent Lating hid
21 evidence or deceived the magistrate.

22 Again, Your Honor, the Plaintiffs need to say the lawyers
23 were misled by the agents for purposes of the FTCA, but none of
24 the lawyers are going to come in here and say that the agents
25 were misleading them.

1 Your Honor, this is the email that I think demonstrates
2 the diligence of Agent Lating, but also the entire team.
3 They're reviewing the affidavit on July 18th, 2013. This is
4 five days before they would swear out -- before Agent Lating
5 would swear out the affidavit in front of Judge Sullivan. And
6 Paragraph 29 says that Lisa Ridolfi was personally told by
7 Annappareddy not to do reversals. And Pam Arnold responded, "I
8 don't think that's correct. I don't think she was told
9 directly. I think she was told through the techs." No secrets
10 here, Your Honor. No hiding. She found something she thought
11 was inconsistent, and she told the rest of the team.

12 She also texts Lisa Ridolfi, Your Honor, and that's the
13 email message at the bottom. And Lisa's response was, "He
14 didn't tell me directly. He told the techs."

15 Sandy Wilkinson -- again, we're still on July 18th, Sandy
16 Wilkinson's note, "Well, that's great, seeing that Lori's
17 report says exactly the otherwise." So they've identified a
18 potential inconsistency between what Lisa Ridolfi said in her
19 text message to Pam Arnold and what Laurie Gutberlet's report
20 said earlier.

21 So what do they do with that information, Your Honor?
22 First of all, Exhibit 47, they call and interview
23 Laurie Gutberlet to get her version of the story.

24 And then Exhibit 50, Your Honor, they go to Lisa Ridolfi's
25 house. They don't call her. They don't text her and say,

1 "Which one is it?" Pam Arnold, Robert Mosley, and Maura Lating
2 get in the car, drive to Lisa Ridolfi's house. She's not local
3 to Baltimore. I don't know where they were, but she lives out
4 in Bel Air. They drive to her house and they say, "Okay, what
5 is it, what's the story?"

6 And Robert Mosley responds with a paragraph that
7 accurately captures what Lisa Ridolfi told them. And again,
8 Your Honor, this information is what's ultimately in the
9 affidavit, and it's taken from Maura Lating's interview report
10 of Lisa Ridolfi. And you can see, Your Honor, this all happens
11 by 9:00 p.m. at night. This is the effort that they expended
12 just to get one sentence in the affidavit right.

13 Your Honor doesn't need a lecture on what probable cause
14 means. I think you understand it. But, Your Honor, this is
15 our probable cause case. It's all of the witnesses. It's all
16 of their accounts. And it's not just as simple as, "Your
17 Honor, he did it, he did it, he did it, he did it." It's much
18 more corroborative than that. The specific details are
19 corroborated.

20 And it's the assessments of all of the investigators that
21 are involved in the team, right. There's a lot of experienced
22 personnel, decades of experience amongst the entire team, and
23 their views of the evidence. We can't know -- we can't
24 substitute our view of what it was like to hear all of this
25 evidence. Let's hear it from the people who were living it day

1 to day. And what they will tell you is they thought the
2 evidence was strong. And this is who's going to tell you that
3 there was no probable cause.

4 No one is going to come in here and tell you he didn't do
5 it. No one is going to come in here and tell you Lisa Ridolfi
6 is a liar. No one is going to come in here and tell you that
7 Dennis Tokofsky is a liar. No one is going to tell you that.
8 No one is going to come in here and tell you that, "I worked
9 with Maura Lating, and she's unethical, she lies." Nobody is
10 going to tell you that.

11 Your Honor, I have a last clip here on malice. I don't
12 really have anything to say about malice. These agents were
13 doing their job. There's no evidence otherwise. There's no
14 personal animus against Mr. Annappareddy. Nobody knew him.
15 Nobody had an axe to grind. They were just agents doing their
16 job.

17 And we're going to put on causation evidence, Your Honor.
18 As Your Honor is aware, the evidence continued to mount after
19 the search warrants were executed.

20 We're going to put on damages, Your Honor. In addition to
21 the expert report, you're going to see evidence of actual
22 investors who spoke to Mr. Annappareddy and had unflattering
23 things to say and were never going to trust him with their
24 money.

25 But Your Honor, we really do think this case should end

1 with the search warrants in the indictment. This was a
2 righteous prosecution based on solid evidence that was brought
3 for no purpose other than to seek justice.

4 Thank you.

5 **THE COURT:** All right. Thank you.

6 I don't think I need a reply argument. Did you want to
7 make one?

8 **MR. FLOWERS:** No. I just want to do a housekeeping
9 matter.

10 **THE COURT:** Go ahead.

11 **MR. FLOWERS:** Your Honor, the Government did not
12 provide its PowerPoint to us. As you know, we provided our
13 PowerPoint to the Government and to the Court. We simply would
14 like to have a copy of the Government's PowerPoint so the
15 litigation playing field is leveled.

16 **THE COURT:** Can you do that, Mr. Phelps?

17 **MR. PHELPS:** No objection.

18 **THE COURT:** Okay. Very good.

19 I think we discussed this at the pretrial conference. But
20 my standard practice is to begin at 9:30, take at least one
21 break in the morning and one in the afternoon. Sometimes more
22 than that, but hopefully just one in the morning and one in the
23 afternoon, break for lunch for about an hour and 15 minutes.

24 And try to get in a good full day of testimony each day.
25 So be sure you have plenty of witnesses here each day so we

1 don't have to cut a day short to finish out the day.

2 Also, did we not say we would invoke the rule on
3 sequestration of witnesses, such that upcoming witnesses would
4 not be present in the courtroom?

5 **MR. GREENBERG:** Yes, Your Honor, you did that.

6 **THE COURT:** All right. Well, when we recess in just a
7 moment, let's be sure to enforce that rule. Tell your
8 witnesses to stay out.

9 Also, I had this come up once, in a case where daily
10 transcripts were ordered, counsel was sharing a transcript of
11 what had been said to upcoming witnesses, which clearly
12 violated the sequestration rule. So I don't want to say that
13 would happen here, but just to make it clear, you can't share
14 transcripts.

15 Anything else by way of a procedural or housekeeping
16 measure before we take a short recess?

17 **MR. PHELPS:** Nothing from the Government. Thank you,
18 Your Honor.

19 **MR. GREENBERG:** Nothing from Mr. Annappareddy, Your
20 Honor.

21 **THE COURT:** Let's take a 10-minute recess.

22 **THE CLERK:** All rise. This Honorable Court is now in
23 recess.

24 (Whereupon, a recess was taken from 10:59 a.m. to 11:14
25 a.m.)

1 **THE COURT:** Just to avoid any confusion about the
2 record on appeal, in terms of exhibits, when either side offers
3 an exhibit that has come in without objection, just state, "We
4 offer Exhibit 43, which is in without an objection." If it's
5 one to which an objection has been lodged, just say, "We offer
6 it into evidence at this time." And we'll look at the other
7 side to see if we get an objection. So even though you put
8 them on the record at the outset, it's not as clear as it might
9 be.

10 Who's going to take the first witness?

11 **MR. FLOWERS:** Your Honor, just one other housekeeping
12 measure. With respect to the opening statements, is the Court
13 okay with us having those attached to the record, just so that
14 it's on the record. It's obviously not evidence, but just so
15 that they're attached to the record.

16 **THE COURT:** I have no problem with that. We'll put
17 both sides in paper copy form.

18 **MR. FLOWERS:** Thank you, Your Honor.

19 **THE COURT:** Please call your first witness.

20 **MR. GREENBERG:** Your Honor, Plaintiff Reddy Vijay
21 Annappareddy calls Laurie Gutberlet.

22 **THE CLERK:** Ma'am, if you'll remain standing. Please
23 raise your right hand.

24 (Witness sworn.)

25 **THE CLERK:** You may be seated.

1 And for the record, ma'am, could you please state and
2 spell your first and last name.

3 **THE WITNESS:** Laurie, L-A-U-R-I-E. Last name
4 Gutberlet, G-U-T-B-E-R-L-E-T.

5 **THE CLERK:** Thank you.

6 - - -

7 **DIRECT EXAMINATION**

8 - - -

9 **BY MR. GREENBERG:**

10 Q. Good morning, Ms. Gutberlet, nice to see you again.

11 You had no role in drafting the affidavit that was
12 submitted, presented to obtain the search warrants in the
13 Pharmacare Matter on July 23rd, 2013, correct?

14 A. Correct.

15 Q. You didn't draft a single sentence in that affidavit,
16 right?

17 A. Correct.

18 Q. In fact, you left the MFCU for a higher paying job in
19 approximately early April 2013, right?

20 A. Yes.

21 Q. So to say that you -- that no one was more responsible
22 than you for drafting the affidavit would be inaccurate,
23 correct?

24 **MR. EISER:** Objection, leading.

25 **THE COURT:** Sustained.

1 That's a leading question. Just rephrase the question.

2 **MR. GREENBERG:** Your Honor, our understanding has
3 been, throughout, that all of the law enforcement officers,
4 current and former, are hostile witnesses that we can ask
5 leading questions to.

6 **THE COURT:** Well, yeah, I think you do have a point.
7 I'll overrule the objection on that basis. This is basically a
8 witness associated with an adverse party, and the Rules of
9 Evidence permit leading questions in that circumstance.

10 **MR. EISER:** Your Honor, if I can be heard.

11 Ms. Gutberlet was an employee of the State of Maryland.
12 They're not a defendant. Medicaid Fraud Unit was never a
13 party.

14 **THE COURT:** They're a party in the parallel 1983 case.

15 **MR. EISER:** Only Pam Arnold is a defendant in that
16 case.

17 **THE COURT:** Well, she's still associated with the
18 defense side of the case, so I'll overrule the objection.

19 **BY MR. GREENBERG:**

20 Q. Ms. Gutberlet, let me sort of bring you back. We were
21 talking about the Lating affidavit. I should have said at the
22 outset, I want to start off by talking briefly about the Lating
23 affidavit. Okay?

24 A. Yes.

25 Q. And you know what I mean by the "Lating affidavit"?

1 A. I do.

2 Q. That's the affidavit that Maura Lating presented to a
3 magistrate judge on July 23rd, 2013?

4 A. Yes.

5 Q. That was several months after you left the MFCU?

6 A. Yes.

7 Q. And you didn't draft a single line of that affidavit?

8 A. I did not.

9 Q. You didn't sign that affidavit?

10 A. I did not.

11 Q. So to say that no person was more responsible for that
12 affidavit than you would be inaccurate, correct?

13 A. No, sir. The basis for the probable cause that was used
14 in that affidavit was based on investigative measures that were
15 taken from the onset of the investigation through the time when
16 it was drafted.

17 Q. So I want to be clear, Ms. Gutberlet. You don't know what
18 investigative measures, if any, were taken after you left the
19 MFCU, right?

20 A. Correct, post April, yes.

21 Q. And you know, I think, or maybe you don't know, that MEDIC
22 1495 was completed after you left MFCU, right?

23 A. Correct.

24 Q. And you know that MEDIC -- you know now that MEDIC 1495
25 was included in the affidavit, right?

1 A. Yes.

2 Q. So given that information, you would agree that to say
3 that you were the main person responsible for the Lating
4 affidavit would be inaccurate, right?

5 MR. EISER: Objection. Asked and answered.

6 THE COURT: I think you made your point. Sustained.

7 Go ahead.

8 BY MR. GREENBERG:

9 Q. Ms. Gutberlet, after you left the MFCU in early
10 April 2013, you didn't have a single communication with Robert
11 Mosley about the Lating affidavit, did you?

12 A. I don't believe I did, no.

13 Q. And the same is true for Maura Lating, you never
14 communicated with her in any way about the Lating affidavit,
15 right, after that?

16 A. I don't want to commit to say no, I have not, because
17 there may have been a phone call from one of my former
18 colleagues at the Medicaid Fraud Unit to maybe make an inquiry
19 or ask a question. I don't recall.

20 Q. Okay. And so apart from, like, maybe an isolated phone
21 call, perhaps regarding the Lisa Ridolfi and reversals issue,
22 you had no communication with anyone in the investigation who
23 knew about the affidavit after you left --

24 A. Correct.

25 Q. -- the MFCU, right?

1 A. Correct.

2 Q. Ms. Gutberlet, now I'm just going to turn to your
3 background. I may come back to the affidavit later.

4 You are from Baltimore County, Maryland, right?

5 A. Harford County.

6 Q. Harford County. Okay.

7 And you lived in Maryland your entire life until moving to
8 Delaware several years ago?

9 A. Correct.

10 Q. And you worked for the Baltimore City Police Department
11 for 24 years and nine months.

12 A. Yes, sir.

13 Q. And when you worked for the Baltimore City Police
14 Department, most of your cases involved drugs, violence, or
15 burglary, right?

16 A. A range of things. It was misdemeanor crimes, felony
17 crimes, homicide, drug investigations, vice investigations,
18 rape investigations, burglary investigations, check fraud
19 investigations.

20 Q. Okay. But other than the check fraud investigations and
21 maybe some theft cases, you didn't do any white-collar
22 investigations?

23 A. Correct.

24 Q. So the Pharmacare matter was your first white-collar
25 investigation, other than, say, check fraud or theft?

1 A. No, sir. When I first started at the Medicaid Fraud
2 Control Unit, the cases that were presented to me prior to the
3 initiation of this case.

4 Q. Let me clarify. You started at the MFCU in approximately
5 mid-September 2011, right?

6 A. Correct.

7 Q. You worked there for approximately a year and a half,
8 correct?

9 A. Correct.

10 Q. And other than that year and a half, you had no experience
11 investigating allegations of healthcare fraud, right?

12 A. Investigations, not specifically healthcare.

13 Q. I'm asking specifically about healthcare.

14 A. Correct.

15 Q. Other than that year and a half --

16 A. Correct.

17 Q. -- from mid-September, 2011, to early April 2013, you had
18 no experience in your career investigating healthcare fraud
19 investigations, correct?

20 A. Healthcare fraud, correct.

21 Q. And the Pharmacare matter is the only pharmacy case you've
22 ever worked on, right?

23 A. Correct.

24 Q. Now, you never dealt with the False Claims Act when you
25 were working, in your almost 25 years, at the Baltimore City

1 Police Department, right?

2 A. Correct.

3 Q. You never worked in anything involving a *qui tam* then,
4 right?

5 A. Correct.

6 Q. Never worked on anything in those almost 25 years
7 involving a whistleblower?

8 A. Correct.

9 Q. So Dennis Tokofsky was the first whistleblower you
10 communicated with, right?

11 A. Correct, yes.

12 Q. And at the Baltimore City Police Department, you had no
13 training in how to -- what kinds of questions to ask
14 whistleblowers because you didn't have any, right?

15 A. Incorrect.

16 Q. Okay. But you had no training on *qui tams*, right?

17 A. Correct.

18 Q. No training on the False Claims Act, right?

19 A. Correct.

20 Q. No training how to handle a whistleblower seeking to
21 obtain money under the False Claims Act, right?

22 A. Correct.

23 Q. And no training on how to handle a whistleblower who had
24 filed a *qui tam* under seal, right?

25 A. Correct.

1 Q. During -- until you worked for the Maryland Medicaid Fraud
2 Control Unit -- I'm calling it the MFCU, I should have reviewed
3 that earlier -- you never researched reversals of pharmacy
4 claims, did you?

5 A. No, I did not.

6 Q. The first time that you even encountered the issue of
7 reversals of claims by a pharmacy was the Pharmacare matter,
8 right?

9 A. Correct.

10 Q. Because that was the only pharmacy case you ever worked
11 on.

12 A. Yes.

13 Q. And you never learned about the time frame for reversals
14 or had any reason to even inquire about it until the pharmacy
15 matter, right?

16 A. Correct.

17 Q. And you had no independent knowledge of that issue, right?

18 A. Correct.

19 Q. I want to talk about the idea that there was a 14-day
20 rule.

21 Ms. Gutberlet, Special Agent Mosley gave you the 14-day
22 rule, right?

23 A. Please explain. Gave me the 14-day rule?

24 Q. Do you know what I mean by "the 14-day rule"?

25 A. No, you said he gave me. I don't understand what the

1 question is.

2 Q. Okay. Do you know what I mean by "the 14-day rule"?

3 A. I do.

4 Q. Okay. And that's the supposed rule that a pharmacy had to
5 reverse a claim within 14 days if a prescription wasn't
6 delivered within that window, right?

7 A. No, I wouldn't say the rule -- it is the best practices or
8 industry standard, 14 day.

9 Q. Okay. So you -- so Special Agent Mosley never told you
10 that it was a law?

11 A. No.

12 Q. He never told you it was a regulation?

13 A. No.

14 Q. There's a notebook that -- a binder, rather. Could you
15 please turn to what's already been admitted, it's Plaintiff's
16 Exhibit 13, Tab 13.

17 MR. GREENBERG: If you can show that exhibit, please.

18 THE WITNESS: Okay.

19 BY MR. GREENBERG:

20 Q. Ms. Gutberlet, you were aware the first time you
21 communicated with Dennis Tokofsky that he had filed a *qui tam*
22 complaint, right?

23 A. No, no. He had not.

24 Q. Because he didn't file it until the next day after he met
25 you, right?

1 A. There was discussion with an attorney in my office
2 regarding the legalities of him talking with me versus filing
3 it. I don't know the chronology of the dates there.

4 Q. But when he met with you, he already had an attorney,
5 right?

6 A. Yes.

7 Q. Okay. And he was already -- he was already talking with
8 his attorney, because the attorney contacted you about filing
9 the *qui tam*, right?

10 A. Yes.

11 Q. Now, if you turn to the last page on Plaintiff's
12 Exhibit 13, this is the *qui tam* complaint filed by
13 Mr. Tokofsky, do you see Page 18 is the last page?

14 A. I do.

15 Q. You see the date on there, about a third of the way down,
16 June 19th, 2012?

17 A. I do.

18 Q. So that's one day after your first meeting with
19 Mr. Tokofsky, right?

20 A. Yes.

21 Q. All right. Let's look at Page 10, Paragraph 30.

22 A. Paragraph 30, "For prescriptions" --

23 Q. I'm sorry. I'll ask --

24 A. Gotcha.

25 Q. Pardon me.

1 **MR. GREENBERG:** If you can please highlight the first
2 two sentences.

3 **BY MR. GREENBERG:**

4 Q. Ms. Gutberlet, could you please read these two sentences?

5 A. Yes.

6 "30. If a prescription is not picked up within 14 days,
7 the medication must be returned to stock. Also, the payment,
8 which was processed at the time of the filling of the
9 prescription, must be reversed because the beneficiary did not
10 receive the medication."

11 Q. And that is essentially consistent with what Mr. Tokofsky
12 told you in your first interview with him, right?

13 A. Correct.

14 Q. And Mr. Tokofsky told you, multiple times, there was a law
15 or regulation requiring that 14-day window, right?

16 A. Not a law or regulation necessarily, it was just the best
17 practices or industry standard that they adhered to, to ensure
18 that they got payment.

19 Q. So your testimony, just so we're clear, Mr. Tokofsky never
20 told you there was a law requiring a 14-day window?

21 A. I don't recall if he used the word "law." I really don't
22 recall.

23 Q. And just to be clear, your testimony is Mr. Tokofsky never
24 told you there is a regulation imposing a 14-day window?

25 A. He may have said "regulation." He may have. I don't

1 recall.

2 Q. Is there a difference in your mind between a law and a
3 regulation?

4 A. Is there a difference?

5 Q. Yes. That's a question.

6 A. Yes, yes.

7 Q. Okay. What's the difference?

8 A. A law being a criminal action, whether at state or federal
9 level; whereas a regulation may be something internally to a
10 company, to a corporation, to a private sector, to government
11 or businesses, it doesn't rise to the level of a law.

12 Q. Okay. So you do not agree that a regulation means a legal
13 requirement imposed by an agency?

14 A. No.

15 Q. Okay. And that's not something that you were trained on,
16 though, until you got to MFCU, right?

17 A. What was something I was not trained on?

18 Q. Well, let me ask you this: Your understanding of
19 regulation is not based on your experience at the Baltimore
20 City Police Department, right?

21 A. I don't understand your question, sir.

22 Q. What is the basis for your understanding of regulation?

23 A. You adhere to policy, regulation, procedures, guidelines.
24 We can use a whole synonym list here. But it doesn't rise to
25 the level of a law.

1 Q. So in your mind, Ms. Gutberlet, industry standard is
2 equivalent to regulation?

3 A. No. Because industry standards could vary depending on
4 what the industry is.

5 Q. All right. Let's say this: In your mind, Ms. Gutberlet,
6 as of 2012, when you worked on the Pharmacare matter, an
7 industry standard was equivalent to a particular policy -- I'm
8 sorry, let me rephrase that.

9 In your mind, Ms. Gutberlet, you understood, as of 2012,
10 when you worked in the Pharmacare matter, that a particular
11 company's standard in the industry where it operated was
12 equivalent to a regulation?

13 A. Yes.

14 Q. And you inquired to multiple people during the
15 investigation about this 14-day window issue, right?

16 A. Inquired?

17 Q. Well, you asked multiple people whether there really was a
18 requirement for a 14-day --

19 A. Oh, absolutely. I was fact-finding. I wanted to find out
20 if it was a law, a federal law, state law, Medicaid law.

21 Q. And you communicated with the folks at the Maryland
22 Department of Health and Mental Hygiene about that issue,
23 right?

24 A. I'm sure I would have contacted them.

25 Q. They told you they're unaware of any hard and fast policy,

1 right?

2 A. I believe so, yes.

3 Q. And after the -- I'm going to call them the DHMH, all
4 right?

5 A. Sure.

6 Q. After the DHMH told you they're unaware of any hard and
7 fast policy, you didn't believe that, did you?

8 A. I had no reason to question that.

9 Q. You had no reason to question that?

10 A. If they said that they weren't aware, why would I
11 disbelieve or not believe? I wanted to find out.

12 Q. But after the communication from the DHMH that you're not
13 testifying you had no reason to disbelieve, you made a
14 subsequent inquiry to Agent Mosley about the matter, right?

15 A. I may have, yes.

16 Q. Okay. And you specifically inquired to
17 Special Agent Mosley about whether there was a law or
18 regulation imposing a 14-day rule, right?

19 A. Yes.

20 Q. And Robert Mosley told you that a law required pharmacies
21 to reverse claims or prescriptions that patients did not
22 receive within a 14-day window, correct?

23 A. I don't recall that conversation.

24 Q. All right. Let me see if we can refresh your recollection
25 with a clip from your deposition.

1 (Video playing.)

2 **BY MR. GREENBERG:**

3 Q. Ms. Gutberlet, does your sworn testimony about that issue
4 that you just saw refresh your recollection?

5 A. Somewhat, yes.

6 Q. Okay. And did you tell the truth during your deposition?

7 A. I did, yes.

8 Q. All right. Now, you took at face value Dennis Tokofsky's
9 report to you that he resigned from Pharmacare, right?

10 A. That was his statement to me.

11 Q. And you did no follow up to see if that was, in fact,
12 true, did you?

13 A. He did resign from Pharmacare.

14 Q. But you only know that from him, correct?

15 A. Correct.

16 Q. You did no follow up by communicating with anyone else
17 about --

18 A. No.

19 Q. You didn't ask unemployment?

20 A. No.

21 Q. You didn't question anyone other than Mr. Tokofsky about
22 that issue, did you?

23 A. Perhaps Lisa Ridolfi at a later date.

24 Q. And so anything she would have told you would be hearsay
25 from Mr. Tokofsky.

1 A. Correct.

2 Q. So you have no statement that you could rely on, other
3 than what Mr. Tokofsky told you, right?

4 A. Correct.

5 Q. Okay. And you understood that Mr. Tokofsky, by filing a
6 *qui tam* complaint, had a financial interest in what he was
7 telling you, right?

8 A. I would imagine so. That's what a *qui tam* would do for a
9 whistleblower.

10 Q. Well, you understand that a -- you understood, at least by
11 the time you'd worked at the MFCU for a while, and you were
12 there, what, a year and a half?

13 A. Uh-huh.

14 Q. So mid-September 2011, roughly, you started?

15 A. Correct.

16 Q. So when you spoke to Mr. Tokofsky, that was about
17 six months later?

18 A. I don't recall the date when we first spoke.

19 Q. Is it accurate that it was May or June of 2012?

20 A. I believe so, yes.

21 Q. Okay.

22 A. I believe so.

23 Q. So during that six- or seven-month period, you learned
24 that a whistleblower in a *qui tam* action can get millions of
25 dollars if there is a multimillion-dollar loss, right?

1 A. Yes.

2 Q. Mr. Tokofsky told you, Ms. Gutberlet, that there was a
3 sort of small clique of Middle Eastern employees at Pharmacare
4 who handled the Med-4s, right?

5 A. I don't recall his verbiage being "clique."

6 Q. That's fair --

7 A. There are employees there, I believe is what he said.

8 Q. Okay. Let me rephrase the question.

9 Mr. Tokofsky told you there was a small group of people,
10 small group of employees at Pharmacare, all of whom were Middle
11 Eastern, that handled Med-4s, right?

12 A. Who worked there and handled Med-4s, correct.

13 Q. Correct. Okay.

14 And your understanding from Mr. Tokofsky when he said
15 Middle Eastern, your understanding was that meant not Caucasian
16 American, correct?

17 A. Correct.

18 Q. And Lisa Ridolfi, when you first interviewed her several
19 months later, she, too, told you there was a small group of,
20 quote, "Middle Eastern employees" who were responsible for
21 Med-4s, right?

22 A. Yes.

23 Q. And similarly, when Ms. Ridolfi told you -- used the word
24 "Middle Eastern," you understood that to be not Caucasian
25 American, correct?

1 A. Correct.

2 Q. And you were not aware at any time during the Pharmacare
3 investigation that Caucasian employees at Pharmacare got
4 information about Med-4s, were you?

5 A. Can you please repeat that?

6 Q. Well, by "Caucasian," it means the same thing as white,
7 right?

8 A. Right, right.

9 Q. So you understand, when you worked in the Pharmacare
10 investigation, you had no reason to believe or you were not --
11 let me rephrase it.

12 When you worked in the Pharmacare investigation, you were
13 not aware that white employees of Pharmacare got information
14 about Med-4s, right?

15 A. No. The pharmacist would be very aware of it because it
16 would have to be done under the guise of a pharmacist.

17 Q. Okay. But I thought you testified you understood from
18 Mr. Tokofsky and Ms. Ridolfi that only the nonwhite people
19 handled the Med-4s?

20 A. From the two of those.

21 Q. Okay. And so let me sort of see if we can get at this a
22 different way.

23 The details about the Med-4s, like the automatic refills,
24 both Mr. Tokofsky and Ms. Ridolfi told you those are only
25 handled by, quote, "Middle Eastern people", right?

1 A. Let's talk about "handled," define that. Being filled?
2 Rebilled? Reversed? Handled. What does "handled" mean?

3 Q. Well, so let's talk about -- let's talk about tracking
4 automatic refills, okay? Can we just limit it to that right
5 now?

6 A. Yes.

7 Q. And you understand what I mean by "automatic refills"?

8 A. I do.

9 Q. Those are refills authorized by prescriber?

10 A. Correct.

11 Q. Okay. So for tracking automatic refills of Med-4s, your
12 understanding, from both Mr. Tokofsky and Ms. Ridolfi, was that
13 only, quote, "Middle Eastern," end quote, employees handled
14 that, right?

15 A. Yes.

16 Q. Okay. And so did you not know, at any time during your
17 work in the Pharmacare investigation, that white employees at
18 Pharmacare got Med-4 trackers, were you?

19 A. Trackers?

20 Q. G -- okay. Let me back up.

21 You, at some point heard, maybe not the word "tracker,"
22 but you understood that Pharmacare tracked automatic refills of
23 Med-4s, right?

24 A. Yes.

25 Q. And you knew that Med-4s were the expensive HIV

1 medications?

2 A. Yes.

3 Q. And you understood -- you never -- you never knew, during
4 your work in the Pharmacare investigation, that white people,
5 white employees of Pharmacare got documents tracking automatic
6 refills in Med-4s, did you?

7 A. No, they would have, because it would have to have been
8 done under the supervision of a pharmacy. And whether the
9 pharmacist knew about it, as in Lisa Ridolfi, there were Med-4s
10 that were being filled that were going through there, a
11 pharmacist has to be there when they're filling prescriptions.

12 Q. So your understanding from Lisa Ridolfi is that she was
13 there when the Med-4s were filled?

14 A. She most likely was. She would have had to have been at
15 times, and then, at times, not.

16 Q. All right. But in terms of tracking the automatic
17 refills, that was what you understood to be a core element of
18 the supposed fraud scheme, right?

19 A. Correct.

20 Q. Okay. And Ms. Ridolfi and Mr. Tokofsky told you that only
21 the Middle Eastern employees had access to those Med-4
22 trackers, right?

23 A. When you say "trackers," I'm relating it to an Excel
24 spreadsheet on a computer.

25 Q. Yes.

1 A. Okay. One and the same, yes.

2 Q. In fact, Ms. Ridolfi and Mr. Tokofsky both told you those
3 were secret documents, right?

4 A. Secret in that they were not shared with the staff.

5 Q. They were not shared with non-Middle Eastern people,
6 right?

7 A. Correct.

8 Q. So you did not know when you worked in the Pharmacare
9 matter that multiple white employees of Pharmacare received
10 Med-4 calendars, did you?

11 A. I'm not aware.

12 Q. And that's something that you would have found important,
13 right?

14 A. That other employees knew of --

15 Q. Let me rephrase the question.

16 So we've agreed that you were not aware, during the
17 Pharmacare investigation, that multiple white employees of
18 Pharmacare received documents, Excel spreadsheets tracking
19 Med-4 refills, right?

20 A. They may have, I was not aware of it.

21 Q. You were not aware --

22 A. Correct.

23 Q. -- we've agreed to that point.

24 And Mr. Tokofsky never told you that he, at least on one
25 occasion, sent a document tracking Med-4 refills, did he?

1 A. He sent a document tracking --

2 Q. Let me rephrase the question.

3 A. Please.

4 Q. If you don't understand a question, you're doing a good
5 job, just please let me know. I want to make sure you
6 understand, okay.

7 So Dennis Tokofsky never told you that several months
8 before he became a whistleblower, he sent a document, a
9 spreadsheet in Excel format, tracking automatic refills for
10 Med-4s, did he?

11 A. I don't recall that.

12 Q. That's because he never told you, right?

13 A. I don't recall. That part of the conversation, I don't
14 recall.

15 Q. Okay. And if he told you, it would be in your interview
16 memo, right?

17 A. If it happened, it was written.

18 Q. Right. Because you were meticulous, right?

19 A. Yes.

20 Q. You were diligent?

21 A. Yes.

22 Q. You were thorough?

23 A. Yes.

24 Q. And you relied on what the witnesses told you and
25 memorialized it?

1 A. Didn't solely rely. I demoralized it as it was conveyed
2 to me, and then had to substantiate things that they told me
3 later through investigative means.

4 Q. Okay. But if a witness told you something that you
5 thought was important or even not important you would write it
6 in your memos, right?

7 A. Yes.

8 Q. And your memos were pretty detailed, right?

9 A. Yes.

10 Q. And you relied on the witness, what they told you, to
11 prepare those memos, right?

12 A. Yes.

13 Q. And in writing the memos -- let me sort of back up.

14 So if Mr. Tokofsky had told you that he ever sent a Med-4
15 calendar or other document to track refills and Med-4s, that
16 would be mentioned in one of your memos, right?

17 A. It would be.

18 Q. Okay. And you don't know whether Robert Mosley knew after
19 you left MFCU that Dennis Tokofsky had access to Med-4 tracking
20 information, do you?

21 A. I can't speak to what Mosley knew.

22 Q. And you don't know whether Maura Lating had access to
23 information?

24 A. I cannot speak to that.

25 Q. Because you weren't there, right?

1 A. Correct.

2 Q. Because during the several months after you left was when
3 the Lating affidavit was mainly drafted, right?

4 A. Yes.

5 Q. Now, you were not aware when you worked in the Pharmacare
6 investigation that Lisa Ridolfi told management at Pharmacare
7 that she processed daily reversals or claims, did you -- or
8 were you?

9 A. Was I aware that Lisa Ridolfi processed claims or
10 reversals? She did at times.

11 Q. Let me sort of back up.

12 Did Ms. Ridolfi ever tell you that she was responsible for
13 sending something called a daily pharmacy manager operations
14 report?

15 A. Yes.

16 Q. And did she ever provide those documents to you?

17 A. She may have as an attachment to one of the reports, I
18 don't recall.

19 Q. You don't recall. If it was attached --

20 A. Yes.

21 Q. -- it would be in your memos?

22 A. Yes.

23 Q. But Ms. Ridolfi never told you that she reported many
24 times to Pharmacare management that she had handled all claims
25 reversals that needed to be completed, did she?

1 A. No.

2 Q. You were unaware of that fact?

3 A. Correct.

4 MR. GREENBERG: Your Honor, just for planning
5 purposes, what time would Your Honor like to take a lunch break
6 just so I can think of what questions to get into?

7 THE COURT: Well, you'd know sooner than 12 noon. But
8 we can adjust if you need to.

9 MR. GREENBERG: I'm happy to keep going. You know, if
10 it's going to be 1:00 -- I'm just trying to think of what lines
11 of questions to get into.

12 THE COURT: Well, it's good if we can break the day
13 about in half, instead of having an early lunch hour. So I'd
14 like to go a little more.

15 MR. GREENBERG: Sure.

16 THE COURT: Go ahead.

17 BY MR. GREENBERG:

18 Q. Now, Ms. Gutberlet, based on the information that Lisa
19 Ridolfi told you about the, quote, "Middle Eastern employees,"
20 you believed it was important not to interview anyone who was
21 Middle Eastern, right?

22 A. At that time.

23 Q. Throughout your time on the Pharmacare matter, right?

24 A. Yes, correct.

25 Q. In fact, you actually sent an email saying not to

1 interview --

2 A. Correct.

3 Q. -- people who were Middle Eastern because of what
4 Ms. Ridolfi told you, right?

5 A. Because there was still a lot of fact-finding to be
6 substantiated.

7 Q. But it was based on what Ms. Ridolfi told you, right?

8 A. Yes. And Mr. Tokofsky.

9 Q. Okay. Ms. Ridolfi and Mr. Tokofsky.

10 A. Yes.

11 Q. Okay. And so as a result, during your time on the
12 Pharmacare investigation, no, quote, "Middle Eastern employees"
13 were interviewed, right?

14 A. Correct.

15 Q. And that's true for former Middle Eastern employees, too,
16 right?

17 A. Correct.

18 Q. Okay. And that's true for someone named Nevine,
19 N-E-V-I-N-E, Abdallah, A-B-D-A-L-L-A-H?

20 A. I don't recall. It's 10 years ago, you would have to
21 refresh my memory.

22 Q. Okay. Do you recall that there was a fraud inspector who
23 worked for the Maryland State government who had a part-time
24 job --

25 A. Yes.

1 Q. -- working at the original Old Emmorton store?

2 A. Yes. I do recall, due to a conflict of interest, she had
3 to leave, I believe.

4 Q. Okay. But you're aware that Pharmacare employed on a
5 part-time basis --

6 A. Yes.

7 Q. -- someone who was working as a fraud inspector?

8 A. I became aware of that, yes.

9 Q. Yes.

10 And you never interviewed that person, did you?

11 A. No.

12 Q. And you never suggested that person be interviewed, right?

13 A. I don't know if another investigator interviewed that
14 individual. I did not.

15 Q. I'm asking whether you, Ms. Gutberlet --

16 A. I did not.

17 Q. -- you never suggested that this fraud investigator who
18 worked part time at Pharmacare be investigated, did you?

19 A. Correct.

20 Q. And that fraud investigator had a Middle Eastern name,
21 didn't she?

22 A. She did.

23 Q. Does she refresh your recollection about Nevine Abdallah?

24 A. Somewhat, yes.

25 Q. Okay. We may come back to Ms. Abdallah.

1 When Robert Mosley gave you the 14-day rule, as we saw in
2 that video clip, you trusted Robert Mosley, right?

3 A. Yes.

4 Q. You never thought Special Agent Mosley -- you understood
5 he did healthcare investigations for a living, correct?

6 A. Correct.

7 Q. And you never thought he would mislead you, right?

8 A. I did not.

9 Q. And just as you were aware that a fraud inspector -- and
10 it was a fraud inspector for the Maryland Department of Health
11 and Mental Hygiene, DHMH, who worked part-time at Pharmacare,
12 right?

13 A. Yes.

14 Q. Just as you were aware of that fact, you told everybody
15 else on the investigation team about that fact, right?

16 A. Told everyone what?

17 Q. Let me sort of back up.

18 Being a diligent investigator, whenever you learn
19 information, any fact about the case or what someone told you,
20 you share it with your team members, right?

21 A. But it also would have been memorialized in an
22 investigative report.

23 Q. Right.

24 So just as you knew that Pharmacare had a part-time
25 employee who was a fraud inspector for Maryland government

1 agency, everybody else in the investigation team knew that from
2 your memos?

3 A. I can't speak to everyone. If they read it, they would
4 know.

5 Q. Okay. Let me rephrase.

6 Everybody who read your memos.

7 A. Thank you. Yes.

8 Q. And they would read your emails, too?

9 A. Yes.

10 Q. And, I mean, we may have already covered this in part, but
11 let me sort of get back to it. I want to talk about sort of
12 your general practices as an investigator.

13 Now, we established that you were methodical, essentially,
14 right?

15 A. That I was what? I'm sorry.

16 Q. Methodical.

17 A. Yes.

18 Q. Diligent?

19 A. Yes.

20 Q. And as a general matter, every time you interviewed
21 someone, you would write a report to the Pharmacare file,
22 right?

23 A. Yes.

24 Q. So if there's no report in the Pharmacare file for a
25 person with your name on it, that means you didn't interview

1 them, right?

2 A. I was not -- I would mean I was not a primary
3 investigator. If I was with another investigator, they would
4 have authored the report.

5 Q. Okay. And if someone else did the report, they would
6 mention you were there, right?

7 A. Yes.

8 Q. And so if you were there, you would be part of the
9 interviewing, right?

10 A. Yes.

11 Q. And on the other hand, to the best of your knowledge,
12 Ms. Gutberlet, whenever you wrote a memo to the file for the
13 Pharmacare matter, it was 100 percent accurate, based on what
14 you knew at the time, right?

15 A. Based on the information I had at the time, yes.

16 Q. And the same is true of emails that you sent to the
17 Pharmacare team members, right?

18 A. Yes.

19 Q. That's the investigation team?

20 A. Yes.

21 Q. So whenever you sent an email to Maura Lating, it was
22 accurate, to the best of your knowledge.

23 A. To the best of my knowledge, yes.

24 Q. And whenever you sent an email to Robert Mosley, it was
25 accurate to the best of your knowledge.

1 A. Correct.

2 Q. At your second interview of -- well, let me sort of
3 rephrase this.

4 You -- there was a meeting in the office of a civil AUSA
5 named Michael A. DiPietro with a bunch of other folks in the
6 investigation team, including you, with Mr. Tokofsky and his
7 lawyer on the phone, right?

8 A. Yes.

9 Q. Mr. Tokofsky was in person, right?

10 A. Yes.

11 Q. And this is in late August 2012?

12 A. Approximately, yes.

13 Q. Okay. We don't need the exact date. But I think we can
14 get to that for now.

15 And at that meeting, in addition to you being present,
16 Robert Mosley was there, right?

17 A. Yes.

18 Q. And Pam Arnold was there.

19 A. Yes.

20 Q. And there were at least eight members of the investigation
21 in that meeting?

22 A. I'm sorry, eight members of the investigation?

23 Q. Let me sort of back up.

24 I mean, this -- the reason why this meeting was in a civil
25 AUSA's office is because the investigation team believed that

1 Tokofsky had important information to convey, right?

2 A. Yes.

3 Q. And it was convened in Michael A. DiPietro's office,
4 right?

5 A. Conference room, but yes.

6 Q. Do you dispute that your memo says "office"?

7 A. I don't recall. But I remember being in a conference room
8 at one point with the people that you previously spoke of.

9 Q. Okay. It was either at his office or a conference room
10 adjacent to his office?

11 A. Correct.

12 Q. And that would be in the U.S. Attorney's Office in
13 Baltimore?

14 A. Yes.

15 Q. And you understood that Michael A. DiPietro was a civil
16 AUSA, right?

17 A. Yes.

18 Q. And you understood at that time, because you began working
19 at the MFCU, you understood that Mr. DiPietro was involved
20 because of the False Claims Act aspect, right?

21 A. Yes.

22 Q. And you understand that Mr. DiPietro was involved because
23 Dennis Tokofsky was a whistleblower who filed a *qui tam*, right?

24 A. Yes.

25 Q. Now, you had interviewed Mr. Tokofsky before that meeting,

1 right?

2 A. Yes.

3 Q. And his lawyer was either present or on the phone then,
4 right?

5 A. Yes.

6 Q. And, again, his lawyer, who filed the *qui tam*, was present
7 on the phone during the August 2012 meeting, right?

8 A. Yes.

9 Q. So throughout your communications to Mr. Tokofsky, his *qui*
10 *tam* lawyer was, essentially, present, right?

11 A. Yes.

12 Q. And his *qui tam* lawyer was basically in Boston,
13 Massachusetts, right?

14 A. Yes.

15 Q. Not Maryland.

16 A. Correct.

17 Q. In your very first communication with Ms. Ridolfi -- that
18 was a phone call, right?

19 A. Yes.

20 Q. And that was on or about September 4, 2012?

21 A. Yes.

22 Q. And during that conversation, your very first conversation
23 with Ms. Ridolfi, she told you, quote, "Reddy's Middle Eastern
24 employees," end quote, handled prescriptions and refills,
25 right?

1 A. Yes.

2 Q. Again, when Ms. Ridolfi told you that during your very
3 first conversation, you understood that to mean not Caucasian
4 American?

5 A. Yes.

6 Q. And in her very first in-person interview with you,
7 shortly after that phone conversation, Ms. Ridolfi again told
8 you, similarly, that automatic refills for Med-4s were hushed,
9 right?

10 A. Yes.

11 Q. And they were secret at Pharmacare, right?

12 A. Yes.

13 Q. And they were secret limited to the Middle Eastern
14 employees, right?

15 A. Yes.

16 Q. And Ms. Ridolfi also told you that these secret documents
17 were maintained in Excel spreadsheets, right?

18 A. Yes.

19 Q. And they had the words "Med-4" on the documents, right?

20 A. Yes.

21 Q. And Ms. Ridolfi told you, and you understood during the
22 investigation, that Med-4s meant medications to treat HIV,
23 cancer, and hepatitis C, right?

24 A. Yes.

25 Q. And the overwhelming majority of the Med-4s that

1 Pharmacare billed for were HIV drugs, right?

2 A. HIV drugs and antipsychotic behavioral drugs.

3 Q. Okay. Well, so -- now, you just testified that you
4 understood that Med-4s included three categories of drugs,
5 right?

6 A. Mm-hmm.

7 Q. And that was based on what Ms. Ridolfi told you and your
8 understanding during the investigation, right?

9 A. Yes.

10 Q. And none of those was antipsychotic, right?

11 A. During the investigation, I learned that they were.

12 Q. Okay. But I'm asking about what Ms. Ridolfi told you --

13 A. Yes.

14 Q. -- and you testified, like, 30 seconds ago that it was
15 three categories, right?

16 A. Yes.

17 Q. And none of them was antipsychotic, right?

18 A. Correct.

19 Q. You didn't know when you spoke with Ms. Ridolfi for the
20 first time on September 4th, 2012, that just days earlier she
21 had gotten a performance warning from Pharmacare, did you?

22 A. I was not aware.

23 Q. In fact, she never told you that, did she?

24 A. Correct.

25 Q. Correct?

1 A. Yes, correct.

2 Q. She concealed that from you, yes?

3 A. Yes. But there was a later time, I don't know the date,
4 but yes.

5 Q. Okay. But she never told you at any time when you worked
6 on the Pharmacare matter, that she had gotten a performance
7 warning from Pharmacare days before she first spoke with you,
8 did she?

9 A. No, she did not tell me that.

10 Q. And you didn't know that at any time during the Pharmacare
11 investigation, did you?

12 A. Correct.

13 Q. And Ms. Ridolfi never told you that in February of 2012,
14 six months -- six or seven months before the first time she
15 spoke with you, she had gotten the performance warning then,
16 did she?

17 A. She did not share that.

18 Q. And you didn't know that at any time during the
19 investigation, did you?

20 A. I did not.

21 Q. And you didn't know that that performance warning in
22 February of 2012 involved some of the very same issues that
23 Ms. Ridolfi blamed on Mr. Annappareddy, did you?

24 A. No.

25 Q. Correct? I'm sorry, correct?

1 A. Correct, yes.

2 Q. In fact, the only performance warning that Ms. Ridolfi
3 told you about was one in December of 2012, right?

4 A. I'm not sure of the day, but yes --

5 Q. It was much later?

6 A. It was much later, yes.

7 Q. And she told you about that one, but she didn't mention
8 the earlier ones, correct?

9 A. Correct, she did not.

10 Q. Ms. Gutberlet, you were aware of, quote, "undercover
11 operations" being done at certain Pharmacare stores, right --

12 A. Yes.

13 Q. -- when you worked on the Pharmacare matter?

14 A. Yes.

15 Q. And most of those were at Plumtree?

16 A. There were other locations.

17 Q. Let's sort of back up for a second.

18 The Plumtree pharmacy is a store in Bel Air, Maryland,
19 where Ms. Ridolfi worked, right --

20 A. Yes.

21 Q. And Bel Air is a short drive from Baltimore, right?

22 A. Forty minutes northeast.

23 Q. Forty minutes. Okay. So not exactly a big truck?

24 A. Correct.

25 Q. Not, like, cross country?

1 A. Correct.

2 Q. Now, the Plumtree store in Bel Air, Maryland, you actually
3 visited that area and took photos of Plumtree and what had been
4 the Old Emmorton store, right?

5 A. Yes.

6 Q. And you put those photos in a PowerPoint presentation,
7 right?

8 A. Yes.

9 Q. I think we'll come back to that PowerPoint later, but I
10 want to focus on the undercover operations for now.

11 You, personally, did not pose as a patient, did you?

12 A. I did not.

13 Q. There are two MFCU investigators who did though, right?

14 A. Correct.

15 Q. Actually, let me sort of back up.

16 Two MFCU investigators and one Maryland State police
17 officer.

18 A. Yes.

19 Q. And the Maryland State police officer is named Sha, S-H-A
20 Brown, right?

21 A. Yes, I vaguely recall that, but yes.

22 Q. And when Officer Brown -- he went to the Plumtree store in
23 around November of 2012, right?

24 A. I believe so, yes.

25 Q. And Jigar Patel refused to fill his prescription, right?

1 A. I'd have to refer to writing on that. I don't recall.

2 Q. So you would need to refresh your recollection on that?

3 A. Yes, please.

4 Q. Okay. We'll come back to it.

5 A. Okay.

6 Q. Now, you understood and you knew, you learned during the
7 Pharmacare investigation that in -- around early December 2012,
8 Jigar Patel was transferred from the Plumtree store to the D.C.
9 store, right?

10 A. Yes.

11 Q. And you also learned that Vipin Patel -- V-I-P-I-N, Patel
12 spelled the same way, but unrelated, P-A-T-E-L -- he was
13 transferred to the brand new CareMerica store, right?

14 A. Yes.

15 Q. And CareMerica was a new store opened in December of 2012
16 at what had been the Old Emmorton store, right?

17 A. Yes.

18 Q. And the Old Emmorton store closed in early January of
19 2012, right?

20 A. Yes.

21 Q. It shut down. Didn't submit any claims, right?

22 A. But then shortly later reopened.

23 Q. Well, it was 11 months later, wasn't it?

24 A. I don't know the date.

25 Q. Well, you just said that CareMerica opened there in

1 December of 2012, right?

2 A. Yes.

3 Q. So that's 11 months, right?

4 A. Okay.

5 Q. So during that remodeling period, you agree, because the
6 pharmacy was being remodeled into a new pharmacy, there were no
7 claims submitted, right?

8 A. I don't know if they were submitted from that location.

9 Q. Let's put it this way: As far as you know, you're not
10 aware of any claim being submitted during the remodeling from
11 Old Emmorton, right?

12 A. Well, they could have been doing business as the Plumtree
13 location since they moved their operation.

14 Q. Let me sort of ask you a different -- maybe a little more
15 precise question.

16 To the best of your knowledge, Ms. Gutberlet, during the
17 investigation, when what had been the Old Emmorton store was
18 closed for remodeling, there were no claims submitted from that
19 location, right?

20 A. To my knowledge.

21 Q. As far as you knew?

22 A. Yes.

23 Q. And at some point, either in anticipation of the
24 remodeling -- yes, in anticipation of the remodeling, the
25 billing for Med-4s and other prescriptions were transferred to

1 Plumtree, right?

2 A. Yes.

3 Q. Okay. And so after the new CareMerica store opened in
4 December of 2012, the vast majority of the Med-4s were handled
5 by CareMerica, right?

6 A. Some of them reverted back, yes, to that location. That
7 was a closed-door pharmacy. It was not a retail.

8 Q. And that's a different type of pharmacy, you understood
9 that?

10 A. Uh-huh.

11 Q. It's just not a closed-door pharmacy, it's a specialty
12 pharmacy, right?

13 A. Yes.

14 Q. And you understand that as a specialty pharmacy, that
15 CareMerica handled the overwhelming majority of the Med-4s for
16 Medicaid patients, right?

17 A. Not the majority, no.

18 Q. Not the majority? Okay. We can come back to that.

19 Let's go back to the undercover operation.

20 So there were two MFCU investigators who posed as fake
21 patients, right?

22 A. Yes.

23 Q. And no one in the investigation do you ever pose as a fake
24 doctor, right?

25 A. No, I don't recall -- I don't -- no.

1 Q. And no one on the investigation team ever suggested
2 getting someone who was not on the investigation team to pose
3 as a fake doctor, right?

4 A. No.

5 Q. You understand that -- a closed-door pharmacy, you
6 understood, you knew at the time, as of December of 2012 and of
7 January 2013 and thereafter, you knew that a closed-door
8 specialty pharmacy had no walk-in customers, correct?

9 A. Correct.

10 Q. And all of their business was delivered to patients,
11 pursuant to prescriptions, right?

12 A. Yes.

13 Q. And so it would be impossible for a fake patient to do an
14 undercover operation, right?

15 A. At the CareMerica location, correct.

16 Q. But it would be possible for a fake doctor to call in a
17 fake prescription, right?

18 A. I guess it would be possible, sure.

19 Q. But no one suggested that, right?

20 A. I wasn't aware.

21 Q. As far as you know, and you were in these roundtable --
22 well, I don't know if you were in the roundtables, but you did
23 a brain dump before you left the Pharmacare investigation,
24 right?

25 A. Yes.

1 Q. You told everything you knew, and you went over your memos
2 in detail with Maura Lating and Robert Mosley and Pam Arnold,
3 right?

4 A. Yes.

5 Q. As of that time, when you left the Pharmacare
6 investigation and got a job with a private company, as far as
7 you know, no one had suggested having a fake doctor call in
8 prescriptions that were fake or otherwise to CareMerica, right?

9 A. Not that I'm aware.

10 Q. And Maura Lating never suggested that, to the best of your
11 knowledge, right?

12 A. Not that I recall.

13 Q. Same for Mosley?

14 A. Same.

15 Q. Same for Arnold?

16 A. Same.

17 Q. Now, back to the undercover operations that were done,
18 I'll put "undercover" in quotes. You understood -- or maybe
19 you didn't, actually. Did you know that Pam Arnold texted
20 Lisa Ridolfi before she posed as an undercover patient at
21 Plumtree?

22 A. I'm not aware that she did.

23 Q. Pam Arnold didn't tell you that?

24 A. She may have, I don't specifically recall.

25 Q. Okay. But sitting here today, as far as to the best of

1 your knowledge and recollection, Ms. Arnold didn't tell you
2 that?

3 A. I don't recall her telling me that; however, it would seem
4 plausible that she may do that. If there was an operation that
5 was being set, it would be reasonable that she would contact
6 her.

7 Q. All right. Well, we can come back to that.

8 Now, you were aware that in -- starting in early
9 January 2013, Pam Arnold and another MFCU investigator posed as
10 two fake patients, right?

11 A. Yes.

12 Q. And they went to three Pharmacare stores, right?

13 A. Yes.

14 Q. One was Plumtree.

15 A. Yes.

16 Q. And then there was Park Heights.

17 A. Yes.

18 Q. And Mt. Clare, right?

19 A. Yes.

20 Q. All those in Maryland, right?

21 A. Yes.

22 Q. And all those driving distance from one another?

23 A. Yes.

24 Q. And at each of those three pharmacies, Plumtree, and
25 Park Heights, and Mt. Clare, Pam Arnold and the other MFCU

1 investigator -- Shannon Beatty was her name, right?

2 A. Yes.

3 Q. B-E-A-T-T-Y --

4 A. T-T-Y. Yes.

5 Q. Those two investigators, Pam Arnold posed as Janet
6 Jaswinski, right?

7 A. Yes.

8 Q. And Shannon Beatty posed as Traci, T-R-A-C-I, Gordon,
9 right?

10 A. Yes.

11 Q. At all three pharmacies, right?

12 A. Yes.

13 Q. And they presented prescriptions, those two MFCU agents,
14 or investigators, that had refills on them, right?

15 A. Yes.

16 Q. And Plumtree was the only store where the refills were
17 billed for and not picked up, right?

18 A. I'd have to refer to the report on that.

19 Q. You don't remember?

20 A. No. It's 10 years ago. I don't remember.

21 Q. We'll come back to that. Actually, you know what, we
22 don't need to come back to it. Let's just do it now.

23 If you could please turn in your binder to Tab 26. This
24 is in evidence. It's a memo that you wrote, Ms. Gutberlet.

25 A. Okay.

1 Q. So this memo, if you count the pages in the binder -- and
2 at this point it's dated February 12, 2013, right?

3 A. Yes.

4 Q. That's about two months before you left MFCU?

5 A. Yes.

6 Q. And you knew at that time you were going to leave and get
7 a new job, right?

8 A. Not at that time.

9 Q. But you were looking for a new job?

10 A. No. An opportunity presented.

11 Q. An opportunity was presented?

12 A. Uh-huh.

13 Q. Okay. But as of this time you wrote this memo, an
14 opportunity was presented?

15 A. No.

16 Q. No?

17 A. No.

18 Q. Okay. When was the opportunity presented?

19 A. Probably March.

20 Q. Okay. All right.

21 So in this -- it says -- what's the subject of this
22 report?

23 A. "Follow-up Report No. 1 for Activity for Undercover
24 Prescriptions."

25 Q. Okay. And this memo is about the undercover operations

1 you've been talking about, right?

2 A. Yes.

3 Q. And this memo is including photos that take up all of
4 Page 3 and a chart on the last page. It's four pages long,
5 right?

6 A. Yes.

7 Q. And if you look at the chart on the last page, you
8 summarized -- and I apologize for the -- I'm not sure if this
9 is the way it was produced or the way we printed it, but I
10 apologize for the poor text quality.

11 But, essentially, you summarized the quote "undercover
12 activity," right?

13 A. Yes.

14 Q. And if you look in the far-left column, under "Date RX
15 Presented," that stands for date prescription presented, right?

16 A. Yes.

17 Q. And that means the date when Pam Arnold and Shannon
18 Beatty, those two investigators posing as fake patients, first
19 presented the prescriptions, right?

20 A. Yes.

21 Q. With -- that all had refills on them, right?

22 A. Yes.

23 Q. If you look in the two columns over under "Location," the
24 first one is Mt. Clare, right?

25 A. Yes.

1 Q. And then under that, there's another Mt. Clare, and then
2 there's Plumtree, right?

3 A. Yes.

4 Q. And then there's another Plumtree, another Mt. Clare,
5 another Plumtree, and then Park Heights, right?

6 A. Yes.

7 Q. And does this chart refresh your recollection that the
8 only one of the three stores where the, quote, "undercover
9 operations" were done, where there were refills billed for and
10 not picked up, was Plumtree?

11 A. Correct.

12 Q. Correct?

13 A. Yes.

14 Q. Plumtree was the only one.

15 A. Well, I'd have to read the report just to be sure.

16 Q. Well, you said this refreshes your recollection.

17 A. Yes, I remember this. But I also remember doing this with
18 the sole intention of looking at the available refills dates,
19 staggering them 28 days apart, and then the follow-up would be
20 30, 60, 90 days later to determine if automatic refills were
21 done without the knowledge or consent of the patient.

22 Q. All right. Well, we agree this report is dated
23 February 12th, 2013, right?

24 A. Yes.

25 Q. And the prescriptions were presented on January 3rd and

1 4th, 2013, right?

2 A. Yes.

3 Q. And so February 12th is more than 28 days later, right?

4 A. Correct.

5 Q. Okay. So at least as of that time, the only one of the
6 three stores where prescriptions were billed for and not picked
7 up -- refills, rather, were billed for and not picked up was
8 Plumtree, right?

9 A. Yes. It would have captured that first 28-day period,
10 nothing beyond that.

11 Q. Throughout the remainder of your time in the Pharmacare
12 investigation, to the best of your knowledge, there were no
13 refills billed for Janet Jaswinski or Traci Gordon at
14 Park Heights, were there?

15 A. At Park Heights, no.

16 Q. And same is true for Mt. Clare, right?

17 A. For Mt. Clare, refill, 1/29/13, for Jaswinski.

18 Q. I'm sorry, where are you reading from?

19 A. Third section down, one that -- available refill dates,
20 and next to it, date filled, refilled, initial prescription
21 date of 1/13/13, refill date of 1/29.

22 Q. Those are only for Plumtree, though, right?

23 A. That's for Plumtree, yes.

24 Q. There's nothing for Mt. Clare, right?

25 A. Nothing for Mt. Clare.

1 Q. And nothing for Park Heights.

2 A. Correct.

3 Q. To the best of your knowledge, during the rest of your
4 work on the Pharmacare matter, you were fully aware of
5 everything going on with the undercover operations, right?

6 A. Yes.

7 Q. Because Pam Arnold communicated with you about them.

8 A. Yes.

9 Q. And there were no refills at Park Heights or Mt. Clare for
10 either of these two fake patients that were billed for at
11 Mt. Clare during the rest of your time on the Pharmacare
12 matter, correct?

13 A. Correct.

14 Q. Same for Park Heights, right? I'm sorry if I'm mixing
15 up -- basically, these undercover operations succeeded only at
16 Plumtree, right?

17 A. Yes.

18 Q. And that's, again, where Ms. Ridolfi worked?

19 A. Yes.

20 Q. And Ms. Ridolfi did not work at Park Heights?

21 A. No.

22 Q. Ms. Ridolfi did not work at Mt. Clare?

23 A. No.

24 Q. Dennis Tokofsky told you on multiple occasions -- let me
25 back up.

1 Dennis Tokofsky alleged in his *qui tam* complaint that
2 70 percent of the Med-4 prescriptions that Pharmacare billed
3 for were never received, right?

4 A. I don't know if 70 percent was his estimation. I'm not
5 sure.

6 Q. Let's go back to Tab 13, please. This is Mr. Tokofsky's
7 *qui tam* complaint?

8 A. Uh-huh.

9 Q. Are you at Tab 13?

10 A. Uh-huh.

11 Q. Thank you.

12 Now, you understood that the *qui tam* complaint was filed
13 in a federal court, right?

14 A. Yes.

15 Q. And you understood that it was important for a
16 whistleblower to only make accurate allegations in federal
17 court, right?

18 A. In any court.

19 Q. Right.

20 And it was also important for a, quote, "whistleblower" to
21 make accurate statements to investigators like you, right?

22 A. Correct.

23 Q. And so corroborating the accuracy was also important,
24 right?

25 A. Yes.

1 Q. But, again, that's not something you were trained on until
2 you got to MFCU, right?

3 A. Incorrect.

4 Q. For False Claims Act cases.

5 A. Oh, for False Claim, correct.

6 Q. Now, in this complaint, we've talked about the --
7 actually, let's move -- there's a section on Page 10 of the
8 *qui tam*, Paragraph 32, where Mr. Tokofsky -- and I'm not going
9 to read the whole part, and you don't need to.

10 But basically, this is consistent with what he told you
11 in, in your first interview, about an incident where he claimed
12 to you -- well, actually, it's not totally consistent. Let me
13 come back to that topic.

14 Look at Page 12, if you will, Ms. Gutberlet, please,
15 Paragraph 37.

16 MR. GREENBERG: And we show -- can we highlight,
17 please, the first sentence of -- actually, the first sentence
18 of Paragraph 37, actually.

19 THE WITNESS: "Relator estimates that approximately
20 70 percent of the prescriptions filled by defendants were never
21 picked up; and of these, only 10 percent were returned to stock
22 in the correct manner."

23 Q. So that would mean that of all the prescriptions that
24 Pharmacare filled -- because the Defendant included Pharmacare
25 and Mr. Annappareddy, right?

1 A. What?

2 Q. Sorry, I was talking too fast.

3 Pharmacare included -- Defendant's there included
4 Pharmacare and Mr. Annappareddy?

5 A. Yes.

6 Q. So is it okay if I just say Pharmacare for simplicity?

7 A. Sure.

8 Q. All right. And the relator is Dennis Tokofsky?

9 A. Yes.

10 Q. So this is telling a federal judge that Dennis Tokofsky
11 estimates that approximately 70 percent of the prescriptions
12 filled by Pharmacare were never picked up and, of these, only
13 10 percent were returned to stock in the correct manner, right?

14 A. That was the relator's estimate, yes.

15 Q. Right. And so you knew, at least as of early August 2012,
16 you knew that Maryland Medicaid alone had paid Pharmacare over
17 \$35 million for prescription drugs, right?

18 A. I didn't know the dollar amount. I don't recall the
19 dollar amount. I'm sure I knew at that time, but I don't know
20 now.

21 Q. Let's quickly -- we'll come back with some more detail, I
22 want to quickly establish this. Tab 14 of the very next one.

23 This is a memo that you wrote dated August 6, 2012?

24 A. Yes.

25 Q. All right. Please turn to Page 6, if you will. If we

1 go -- under top prescribed -- I'm sorry.

2 Page 6 of the report, not ECF.

3 Okay. You see there's a heading "Top Prescribed Drugs" in
4 the middle of the page?

5 A. Yes, Page 6.

6 Q. And do you see under top prescribed drugs, it says there
7 are a total of 2,447 different drugs that have been billed by
8 Pharmacare to Medicaid?

9 A. Yes.

10 Q. And this is as of June 12th, 2012, right?

11 A. Yes.

12 Q. And that is over a year before June 23rd, 2013, right?

13 A. Yes.

14 Q. So as of this time, if you go to the second paragraph.

15 Let's highlight the first sentence, please.

16 It says -- do you just want to read that, please, out
17 loud, Ms. Gutberlet?

18 A. The amount of paid claims for the top 20 drugs is
19 \$16,722,991.33, which comprises 60 percent of Pharmacare's
20 total Medicaid paid claims.

21 Q. Okay. And that's just the top 20 drugs, right?

22 A. Yes.

23 Q. Let's back up to -- you also found that as of June 12th,
24 2012, within the top 20 drugs, HIV drugs accounted for
25 60 percent of those, right?

1 A. Yes.

2 Q. All right. So the HIV drugs are the vast majority or
3 clear majority of Pharmacare's Medicaid business, right?

4 A. Yes.

5 Q. And as a result, HIV drugs were the focus of the
6 investigation, right?

7 A. No.

8 Q. No?

9 A. No.

10 Q. So you never emphasized to Special Agent Mosley the
11 importance of the HIV drugs?

12 A. Oh, I emphasized the importance. And I also would have
13 had a side note that there are others as well that are
14 considered high dollar. High-dollar reimbursement
15 prescriptions is what we were looking at. So the scope of that
16 broadened from cancer and HIV drugs to other drugs, digressing
17 back to your question earlier.

18 Q. Isn't it true that far and away the biggest source of
19 Medicaid revenue were HIV drugs more than any other category
20 for Pharmacare?

21 A. Yes.

22 Q. And as a result, you knew Atripla was the most expensive
23 HIV drug, right?

24 A. One of the most, if not the most, yes. It was one of
25 three that were --

1 Q. In fact, Atripla, you agree, got more attention than any
2 other drug in the investigation, right?

3 A. No.

4 Q. No? You disagree with that?

5 A. Yeah, I disagree with that. Any drug that would have come
6 up under paid claims would have been looked at under the same
7 optic. It was the results of looking at that that brought it
8 to the forefront.

9 Q. All right. So any drug in paid claims would be looked at
10 the same?

11 A. Yes.

12 Q. So if there were a table showing -- sorry.

13 If there was a table showing the drugs of paid claims, all
14 drugs would be treated equally?

15 A. Yes, they would be looked at for preliminary look-see to
16 see what we have here.

17 Q. And you wouldn't focus more on the drugs that were paid
18 for --

19 A. Only after reasonable analysis that was done that would
20 give cause or give rise to me looking at that closer.

21 Q. All right. Let's turn to the next page of this document.

22 So this is a table on the top 20 drugs, right?

23 A. Which page are you referring?

24 Q. The very next page.

25 A. Seven?

1 Q. Yes, ma'am.

2 A. Yes. Got it.

3 Q. The very next page is top 20 drugs, right? Billed?

4 A. Yes.

5 Q. The previous page focused on the top 20 drugs, right?

6 A. Yes.

7 Q. You didn't do a paid claim analysis for all of the drugs,

8 did you?

9 A. No.

10 Q. You focused on the top 20?

11 A. Yes.

12 Q. And if you look at Page 7, it says Table 6, right, "Top 20

13 drugs billed by Pharmacare by dollar amount through June 12,

14 2012."

15 A. Yes.

16 Q. What's the first drug on that last? The top one?

17 A. Atripla.

18 Q. How do you spell that?

19 A. A-t-r-i-p-l-a.

20 Q. What's the payment amount for that drug?

21 A. \$3,980,982.54.

22 Q. And that is more than 1.2 million than the next drug,

23 right?

24 A. Yes.

25 Q. What's the next drug?

1 A. Truvada.

2 Q. How do you spell that?

3 A. T-r-u-v-a-d-a.

4 Q. That's another HIV drug, right?

5 A. Yes.

6 Q. What's the dollar amount there?

7 A. \$2,719,155.18.

8 Q. Now, the third drug compared to -- Truvada is nearly
9 1.9 million than the third drug, right?

10 A. The third drug, yes.

11 Q. And the third drug is also an HIV drug; isn't it?

12 A. Yes.

13 Q. So you agree Atripla and Truvada were far and away the
14 most billed for and paid for drugs as of June 12, 2012, right?

15 A. Yes.

16 Q. And Atripla, maybe this refreshes your recollection now,
17 you agree that Atripla got special attention?

18 A. It got the attention that it warranted.

19 Q. All right. So you still don't agree that's special
20 attention?

21 A. The attention that was given to each entry here was one in
22 the same. It was only the results of the analysis that gives
23 rise to it being concentrated more.

24 Q. All right. We'll come back to Atripla perhaps later.
25 On this list in Table 6, not a single drug that's not an

1 HIV drug has a payment amount over one million, right?

2 A. Correct.

3 Q. And if you combine Atripla and Truvada, that is over
4 6.6 million, right?

5 A. Yes.

6 Q. Let's --

7 A. If I could go back to the question --

8 Q. Let's just move on to another question --

9 MR. EISER: Objection.

10 THE COURT: On what basis?

11 MR. EISER: She's trying to give an answer.

12 THE COURT: All right. Let her finish her answer. Go
13 ahead.

14 THE WITNESS: Clarification on the previous question
15 about the drugs that are listed. If you look at number 4 and
16 then you go down on the list and you look at number 15,
17 although they are separate by, what, nine spaces, they are the
18 same drug, just different milligrams. So if you look at those
19 collectively 845,000 and 461,000, you'll see where that will
20 land in the numbers.

21 BY MR. GREENBERG:

22 Q. Okay. But your table has Atripla and Truvada at the top,
23 right?

24 A. Correct.

25 Q. And it doesn't combine the different dosage numbers that

1 you just mentioned, right?

2 A. For Atripla and Truvada? No I'm speaking --

3 (Overlapping speakers.)

4 Q. The drugs you just referred to --

5 A. I'm speaking of Seroquel.

6 Q. Your table doesn't combine them, does it?

7 A. No, because they're separated by milligram.

8 Q. And because there's different prescriptions for different

9 doses, aren't there?

10 A. Yes.

11 Q. So you list them separately?

12 A. Yes.

13 Q. And so you have Atripla and Truvada at the top, right?

14 A. Yes.

15 Q. Do you agree with that?

16 And my question that you went off on a tangent on --

17 A. Excuse me.

18 Q. -- was whether -- you went off on a tangent on -- my

19 question was there any drug in here that was over \$1 million?

20 That was my question.

21 A. Yes. Seroquel, yes.

22 Q. How is Seroquel over \$1 million?

23 A. 845,000 and 461,000.

24 Q. So you're adding different doses and you're including the

25 XR along with the immediate release, right?

1 A. Yes.

2 Q. And you know that XR is extended release?

3 A. Yes.

4 Q. And if you chew an extended XR tablet that can damage a

5 patient --

6 A. Yes.

7 Q. -- that's on immediate release?

8 So to combine them would be medically inappropriate?

9 A. Different context.

10 Q. You're not a doctor, are you?

11 A. Of course not. But context here, the drug.

12 Q. Ma'am, we've agreed, is there different dosages of

13 different types of drugs?

14 A. Yes.

15 Q. XR is extended release?

16 A. Yes.

17 Q. And one is immediate release, right?

18 A. Yes.

19 Q. And those are very different formulations, aren't they?

20 A. Yes.

21 Q. Apples and oranges, aren't they? Yes?

22 A. Perhaps.

23 Q. You don't know?

24 A. I didn't say I didn't know.

25 Q. Well, is it yes or no?

1 A. They're the same drug, different dosages.

2 Q. Okay. They're not the same because one is extended
3 release --

4 A. Correct.

5 Q. -- and one's immediate release?

6 A. Correct.

7 Q. And so you put them in different rows, right?

8 A. Yes.

9 Q. Now, again, back to my question, there's no drug on this
10 list over \$1 million, other than Atripla and Truvada, right?

11 A. Yes.

12 Q. And those two combine for over \$6.6 million, right?

13 A. 6-point -- that's about right.

14 Q. Okay. And of the top 20 -- let's just actually move on to
15 a different topic for now.

16 Now, let's just pretend that Atripla and Truvada were the
17 only drugs that Tokofsky made reports about, okay. Those
18 dollar amounts, over 6.6 million, right?

19 A. What are we pretending?

20 Q. Let's go back to his *qui tam*.

21 A. Okay.

22 Q. In fact, let's not pretend. Let's use the number in your
23 top 20, all right. So if your top 20 -- you said the amount of
24 paid claims -- on Page 6 -- the amount of paid claims for the
25 top 20 drugs is 16.7 million, right?

1 A. Yes.

2 Q. And if you go back to the *qui tam* in Tab 13 -- remember
3 paragraph 37 --

4 A. Yes.

5 Q. -- where Dennis Tokofsky told a federal judge that he
6 estimates that approximately 70 percent of the prescriptions
7 filled by Pharmacare were never picked up?

8 A. Yes.

9 Q. And of those, only 10 percent were returned to stock in a
10 correct manner, right?

11 A. Yes.

12 Q. That's -- and that's essentially what he told you at the
13 first interview too, right?

14 A. Yes.

15 Q. And that's the day before he filed the *qui tam*?

16 A. Yes, it was his estimation.

17 Q. Right. That was an estimation.

18 Now, if that estimate were true, just based on the top 20
19 drugs of 16.7 million, if you multiple that by 70 percent, do
20 you have a phone with you? I just want to see if you have a
21 calculator.

22 A. Yes.

23 Q. Can you pull out the phone calculator?

24 A. Do you want to the just tell me what the percentage is?

25 Q. No, I want to ask you and have you do the math.

1 A. Oh, okay.

2 MR. EISER: Objection.

3 THE WITNESS: Let me excuse myself and get my bag.

4 MR. EISER: Objection, Your Honor.

5 THE COURT: On what basis?

6 MR. EISER: She doesn't need to be doing his math.

7 She's not a --

8 THE COURT: Well, it's his witness and he's burning up
9 his time if he wants her to do it.

10 BY MR. GREENBERG:

11 Q. Ms. Gutberlet, I don't want you to spend time getting your
12 bag. Where is your bag -- let's not worry about it. Let's not
13 worry about it.

14 Without getting to the exact number, you agree that you
15 take 16.7 million, just for the top 20 drugs, times 70 percent,
16 times 90 percent, which is what Tokofsky was reporting was
17 fraudulently billed for, that's a very large amount of money,
18 right?

19 A. Not what he reported, what he estimated.

20 Q. Okay. You agree that his estimate is a very large amount
21 of money?

22 A. Yes.

23 Q. And you knew that he would get a significant percentage of
24 that very large amount of money as a *qui tam* relator?

25 A. I don't know what percentage he may or may not have

1 gotten.

2 Q. Oh, okay. So you didn't know that whistleblowers can get
3 20, 25 percent of the recovery?

4 A. My concern was not the whistleblower portion.

5 Q. That's not my question.

6 A. No.

7 Q. You didn't know?

8 A. No.

9 Q. Because you weren't an experienced healthcare fraud
10 investigator?

11 A. Because I wasn't experienced in *qui tam* law.

12 Q. You weren't experienced in *qui tam* law, but Special
13 Agent Mosley was, right?

14 A. You would have to defer to him.

15 Q. Okay. But you understood that he worked for the
16 Department of Health and Human Services Offices --

17 A. Yes.

18 Q. -- and Inspector General, right?

19 A. Yes.

20 Q. And you understood that his whole job was investigating
21 and enforcing healthcare laws and regulations, right?

22 A. Yes.

23 Q. All right. And so he was experienced with healthcare
24 *qui tams*, right?

25 A. I would presume as much.

1 Q. Right. And so taking this estimate -- well, okay, let me
2 sort of back up. Maybe this explains some things.

3 You didn't have any idea, when you worked in the
4 Pharmacare matter, what percentage Dennis Tokofsky stood to
5 gain if his *qui tam* succeeded, did you?

6 A. I did not.

7 Q. We can move on from the *qui tam*. And I think this is a --
8 let's go a little bit, actually.

9 Ms. Gutberlet, Dennis Tokofsky told you during your first
10 interview of him that he took no notes when he saw
11 approximately 200 prescriptions that he claimed were
12 undelivered in January of 2012, right?

13 A. He saw them in a bin.

14 Q. And he told you he took no contemporaneous notes, right?

15 A. I don't believe he did.

16 Q. You don't believe he told you --

17 A. I'd have to look at the report.

18 Q. Okay. Let's look at tab -- no, this is actually a
19 Government exhibit. All right. Let's just stick with the
20 *qui tam* for now.

21 Do you see in the -- do you see on the *qui tam* on Page 10,
22 Paragraph 32 --

23 A. What tab, please?

24 Q. Huh?

25 A. What tab are we referring to?

1 Q. Tab 13, ma'am. Paragraph 32 on Page 10.

2 Will you highlight the last sentence in Paragraph 32. The
3 last sentence. Verbatim.

4 Ms. Gutberlet, can you read that out loud from
5 Paragraph 32?

6 A. 32: "When the relator --"

7 Q. Just the last sentence.

8 A. "On information and belief --"

9 Q. The last sentence.

10 A. "Relator took note of a few of the names of five of these
11 abandoned prescriptions."

12 Q. Right. So the relator is Mr. Tokofsky, right?

13 A. Correct.

14 Q. And he's telling the federal court that he took notes
15 during this occasion, right?

16 A. Yes.

17 Q. Okay. And there's a chart on the top of the next page?

18 A. Yes.

19 Q. And it has two entries for patient A and then there's
20 three other patients?

21 A. Yes.

22 Q. And Mr. Tokofsky is telling the federal court that based
23 on the notes he took, contemporaneously at the time, he took
24 note of the prescription numbers, right?

25 A. Yes.

1 Q. And Mr. Tokofsky is telling the federal judge that he took
2 notes of the dates?

3 A. Yes.

4 Q. And he's telling the federal court that he took notes of
5 the payor for each of those, right?

6 A. Yes.

7 Q. Okay. Now, Ms. Gutberlet, do you have the binder of the
8 government exhibits?

9 A. Uh-Uh. I have --

10 Q. You only have one binder?

11 A. Yes.

12 Q. Let's get that. I'm going to ask some questions about
13 documents in this binder now. These are government exhibits.

14 All right. Do you see on the very first page of this
15 exhibit books, what's Exhibit Number 1?

16 A. Interview of Dennis Tokofsky.

17 Q. Turn to Tab 1, please, ma'am. Tab 1. It's Government's
18 Exhibit 1. Let me know when you've gotten there.

19 A. Page 1.

20 Q. Tab 1.

21 A. Tab 1.

22 Q. All right. Now, this is a memo to file for Pharmacare
23 from you, Ms. Gutberlet, right?

24 A. Yes.

25 Q. It's on your first interview with Dennis Tokofsky, right?

1 A. Yes.

2 Q. The memo is dated June 26, 2012, right?

3 A. Yes.

4 Q. And it says in the middle of Page 2 that on May 3rd, 2012,
5 the chief investigator of the MFCU, Peggy Gayhardt, got a call
6 from an individual who turned out to be Dennis Tokofsky, right?

7 A. Yes.

8 Q. And do you see how in the -- in the very first bullet
9 point, in the very first contact that Mr. Tokofsky had with
10 MFCU, he said that he terminated his employment?

11 A. Yes.

12 Q. And then the very first -- the next second bullet point,
13 he says there was a required 14 days to reverse billings for
14 Medicaid --

15 A. Yes.

16 Q. -- right? For the unreceived.

17 A. Yes.

18 Q. It doesn't say anything about industry standard, does it?

19 A. No.

20 Q. Right. So and he said, second to last bullet point, he
21 was interested in relaying his allegations as a whistleblower
22 but expressed concerns of his confidentiality?

23 A. Yes.

24 Q. So from the get-go, he was interested in being a
25 whistleblower?

1 A. I don't know at what point he opted to do that.

2 Q. Well, it says he was interested in relaying his
3 allegations as a whistleblower. You already testified that he
4 filed his *qui tam* one day after his first meeting with you,
5 right?

6 A. Yes.

7 Q. So he was interested in being a whistleblower, right?

8 A. Yes.

9 Q. Now, do you see on Page 6 there's some bullet points. You
10 see the first one is the business model based on delivery
11 services of which Tokofsky estimated over 90 percent of the
12 business delivery?

13 A. Yes.

14 Q. That was your understanding during the Pharmacare
15 investigation, right?

16 A. Yes.

17 Q. And the second bullet point at the end of the last
18 sentence -- actually let's move on. Let's move on. I want to
19 find the -- actually, let's go -- see how the third bullet
20 point from the last says, "Tokofsky estimates the success rate
21 of delivery to nonclinical locations to be approximately
22 45 percent"?

23 A. That's what he estimated.

24 Q. And that is what he -- okay. So he's telling you almost
25 half of the deliveries to nonclinical locations never

1 succeeded, right?

2 A. He's estimating.

3 Q. And he's estimating that almost half of those
4 prescriptions are fraudulently billed for, right?

5 A. Where do you see half of those are fraudulently billed
6 for?

7 Q. Well, didn't he tell you that Pharmacare was almost always
8 failing to reverse claims for undelivered prescriptions.

9 A. Yes, that was common practice.

10 Q. Well, that's what Mr. Tokofsky told you?

11 A. Yes.

12 Q. Now, do you recall that Dennis Tokofsky told you about a
13 supposed incident in January of 2012 when he found
14 approximately 200 prescriptions that were undelivered?

15 A. Yes.

16 Q. And do you recall that he told you that he took no notes
17 on that issue?

18 A. I don't recall if he indicated he took notes or not. I
19 don't recall.

20 Q. All right. Turn to Page 14, please.

21 **MR. GREENBERG:** If we could scroll down, first, to the
22 sentence starting with, "When asked to elaborate what Med-4
23 means," and highlight that sentence.

24 **BY MR. GREENBERG:**

25 Q. So here, Mr. Tokofsky is telling you, Ms. Gutberlet, that

1 Med-4, just to sum it up, AIDS and hepatitis C drugs, right?

2 A. High-priced drugs.

3 Q. The highlighted sentence doesn't say "high-priced," does
4 it? It says drugs that are prescribed for people with AIDS and
5 hepatitis, right?

6 A. Yes.

7 Q. And that's what Mr. Tokofsky told you.

8 A. Yes.

9 Q. He defined Med-4s as AIDS and hepatitis.

10 A. Yes.

11 Q. Now, let's go down to the -- the sentence starting with,
12 "While Tokofsky did not record."

13 A. Yes.

14 MR. GREENBERG: Highlight that.

15 BY MR. GREENBERG:

16 Q. So Dennis Tokofsky told you that when he -- during this
17 incident that he reported in January 2012, he didn't record any
18 of the information he found at the time, right?

19 A. Correct.

20 Q. He told you he was able to remember four patients' names,
21 right?

22 A. Correct.

23 Q. He didn't tell you he was able to remember five different
24 prescription numbers and six digits each, did he?

25 A. No.

1 Q. But he told the federal court that he took notes on all of
2 that, didn't he?

3 A. I don't know --

4 Q. We've covered that; remember, in the *qui tam*?

5 A. Yeah, yeah.

6 Q. So he told you that he didn't record any of that
7 information at the time.

8 A. Correct.

9 Q. And that's inconsistent with taking notes at the time,
10 isn't it?

11 A. Well, no. Visual, he could have recalled, written,
12 visual.

13 Q. You testified within the past five minutes that he told
14 the federal court that he took notes, like, wrote notes.

15 A. Took notes, wrote notes. Different.

16 Q. You're saying now that you didn't testify that he wrote
17 notes --

18 A. No, what I'm saying is, you're using the word "took notes"
19 and took notes as in writing or visual. I don't know what he
20 observed. Did he write it? Did he visually observe it and
21 remember it?

22 Q. So we've covered this. I don't want to go back to the
23 *qui tam* and waste time on this. You already testified that he
24 wrote notes. You told the federal court that he wrote notes on
25 five prescriptions, right?

1 A. Yes --

2 MR. EISER: Objection, mischaracterizing both the
3 document and the *qui tam*. He simply said he noted these
4 things. He didn't say he wrote notes. He's getting this
5 witness completely confused.

6 THE COURT: Well, you made your point. You can
7 explore that on cross. I understand your point.

8 Go ahead.

9 MR. EISER: Thank you, Your Honor.

10 BY MR. GREENBERG:

11 Q. Ms. Gutberlet, you testified within the past five minutes
12 that in the *qui tam*, Mr. Tokofsky told the federal judge that
13 he wrote notes at the time on the prescription numbers, right?

14 A. On the prescriptions -- on the -- I don't know if it was
15 prescriptions or the patients.

16 Q. All right. Let's go back to Tab 13 in the first binder.
17 Let's go to the -- so your testimony today has been truthful
18 all along, right?

19 A. Yes.

20 Q. So we covered -- remember, we asked you a bunch of
21 questions about the last sentence in Paragraph 32 on Page 10
22 and the paragraph on top of Page 11?

23 A. Okay. Page 10. Your question? Relator --

24 Q. The detailed table with six-digit prescription numbers for
25 five different prescriptions in that table at the top of

1 Page 11.

2 A. This reads, "Relator took note of a few of the names of
3 these abandoned prescriptions."

4 Q. And then it has a col --

5 A. The names -- not the prescription numbers.

6 Q. And it has a colon, right?

7 A. It has a what?

8 Q. Okay. But -- so okay. So relator took note of the names.

9 Okay. So your understanding of the *qui tam* is that Dennis
10 Tokofsky is telling the federal court that he only took -- only
11 wrote notes on the names.

12 A. Again, don't know if he wrote it. I don't know if he
13 visualized it.

14 Q. Okay.

15 A. But he took notes.

16 Q. Well, let's put it this way. Let's go back to the
17 Government's binder, Exhibit 1. Let's go back to that sentence
18 saying, "While Tokofsky did not record."

19 MR. GREENBERG: Page 14 of Tab 1, Government's
20 Exhibit 1.

21 BY MR. GREENBERG:

22 Q. So Dennis Tokofsky told you -- and you understood that
23 "record" meant take notes, right?

24 A. Yes.

25 Q. So Tokofsky told you that he didn't record any of the

1 information he discovered at the time, correct?

2 A. Correct.

3 Q. And he told you he didn't take notes on any of the
4 information he discovered at the time, right? Because you
5 said -- you agree "record" means notes.

6 A. Your question?

7 Q. You agree that Mr. Tokofsky told you, in your very first
8 interview with him, on the day before he filed the *qui tam*,
9 that he took no notes during this supposed incident in January
10 of 2012, right?

11 A. Correct.

12 Q. And he told you he was able to remember four patients'
13 names, right?

14 A. Yes.

15 Q. He didn't tell you he was able to remember any
16 prescription numbers, did he?

17 A. Correct.

18 MR. GREENBERG: We can break for lunch, if this is
19 good for Your Honor.

20 THE COURT: All right. Let's recess for lunch for an
21 hour and 10 minutes, so that'll bring us back at 1:55.

22 We'll be in recess.

23 THE CLERK: All rise. This Honorable Court is now in
24 recess.

25 (Whereupon, a recess was taken from 12:45 PM to 1:55 PM.)

1 **THE CLERK:** All rise. This Honorable Court resumes in
2 session.

3 **THE COURT:** Please continue, Mr. Greenberg.

4 **MR. FLOWERS:** Your Honor, just a housekeeping matter
5 with respect to two things, if I could.

6 One, we're turning to the opening statements. I just want
7 to make sure that the Court and opposing counsel is okay with
8 kind of taking a picture of the chart they made there and then
9 attaching that to the opening statement.

10 And I also just want to make sure that it looked like
11 opposing counsel used some exhibits that might not be attached
12 to his PowerPoint, so that he would attach those to his
13 PowerPoint. And I think he can --

14 **THE COURT:** Just take care of those after hours.
15 You're talking about your sketch of the fruit stand?

16 **MR. FLOWERS:** Yes, Your Honor.

17 **THE COURT:** No problem.

18 **MR. FLOWERS:** Okay. And the only other thing was, we
19 just want to make sure that all counsel is aware that when a
20 witness is on break, that we're not to talk to the witness
21 about the subject of their testimony.

22 **THE COURT:** Right. That will carry out throughout
23 trial. Don't discuss testimony with the witness who's on the
24 stand. My law clerk says there's a local rule already in place
25 on that. So we're good.

1 Please continue.

2 **BY MR. GREENBERG:**

3 Q. Ms. Gutberlet, you testified, if I remember correctly,
4 before we went to lunch break, that Atripla was not a special
5 focus of the investigation, right?

6 A. It became a focus.

7 Q. It became a special focus investigation, right?

8 A. A focus.

9 Q. You don't remember telling anyone that it was a special
10 focus in the investigation?

11 A. I -- likely, we discussed the top 20 drugs that were
12 getting my attention because of the paid claims.

13 Q. Do you remember saying at other times that it was a
14 special focus investigation?

15 A. I may have. I don't recall.

16 Q. You don't recall, okay.

17 (Video playing.)

18 **BY MR. GREENBERG:**

19 Q. Does this refresh your recollection, Ms. Gutberlet?

20 A. It does.

21 Q. And again, your testimony in your deposition was truthful,
22 right?

23 A. Yes.

24 Q. That's Atripla.

25 I want to talk just about a few more sort of chapters, if

1 you will.

2 Next one is transfer of inventory, okay?

3 A. What document are you referring to?

4 Q. Well, let's see if you can do it from memory first. I
5 mean, is it accurate that multiple witnesses told you there
6 were significant amounts of inventory transferred among --
7 between and among the Pharmacare stores?

8 A. Yes, yes.

9 Q. That's something you put in multiple interview memos?

10 A. I likely would have.

11 Q. Okay.

12 A. If it was told to me, it was reported.

13 Q. You recall that Caitlin Biemer gave you documents showing
14 store-to-store transfers?

15 A. Yes, Caitlin -- yes, I remember Caitlin Biemer.

16 Q. And you wrote in your memo how Ms. Biemer told you about
17 transfers of inventory between stores?

18 A. If it's written, it happened, she said it.

19 Q. And you reviewed the documents that showed the
20 store-to-store transfers --

21 A. Yes.

22 Q. -- and you memorialized that, right?

23 A. Yes.

24 Q. Lisa Ridolfi told you there were frequently transfers of
25 inventory among the stores, right?

1 A. Yes.

2 Q. And Ms. Ridolfi characterized that was somehow improper,
3 didn't she?

4 A. Yes.

5 Q. All right. Let's move on from the transfers.

6 The next chapter, if you will, is logs. You still have
7 your binder, right?

8 A. Yes.

9 Q. This will be Plaintiff's Exhibit 22, your memo of your
10 first interview with Lisa Ridolfi?

11 A. Yes.

12 Q. Okay. And Ms. Ridolfi told you in her very first
13 interview that Pharmacare used logs to track receipt of
14 medications, right?

15 A. Yes.

16 Q. And she described the logs that Pharmacare used as
17 business records, right?

18 A. Yes.

19 Q. And Ms. Ridolfi also told you, as did at least one other
20 person you interviewed in 2012, that these logs were kept at
21 Plumtree, right?

22 A. Yes.

23 Q. All right. We can move on from logs to, I think, what is
24 sort of the final, quote, "chapter" here. And that is media,
25 media coverage.

1 You -- we talked -- I mentioned your PowerPoint
2 presentation that you emailed in December 2012; do you remember
3 that?

4 A. Yes.

5 Q. And in that PowerPoint presentation, you included a link
6 to the audio of an interview that Mr. Annappareddy did on the
7 radio station, right?

8 A. Yes.

9 Q. This is a public interview available to anyone in the
10 world, right?

11 A. Yes.

12 Q. The other members of the investigation team listened to
13 that same audio, right?

14 A. Yes, I believe they did.

15 Q. And they listened to it in the entirety.

16 A. I don't know if they listened to it in the entirety.

17 Q. Well, your understanding was they listened to it in the
18 entirety.

19 A. Yes, my understanding, yes.

20 Q. And you listened to it in its entirety, right?

21 A. Yes.

22 Q. And in your entire career, are you aware of any other
23 situation where a person spoke publicly, but the very subject
24 of something they were later indicted for? Let me rephrase
25 that.

1 Spoke publicly to the media about something they were
2 later indicted for?

3 A. I don't recall.

4 Q. This -- this man is the only one -- your lengthy law
5 enforcement career did that, right?

6 A. Most likely.

7 Q. The answer is yes, isn't it?

8 A. I don't recall of anyone that was indicted that I listened
9 to an interview.

10 (Video playing.)

11 Q. Ms. Gutberlet, does this refresh your recollection?

12 A. Yes, it does.

13 Q. And you told the truth in your deposition, right?

14 A. Yes.

15 MR. GREENBERG: Nothing further at this time.

16 THE COURT: All right? Cross -- I'm sorry direct
17 examination, I should say.

18 MR. GREENBERG: Your Honor, my apologies. The Court's
19 indulgence for one moment. I want to consult with co-counsel.

20 Yes, Your Honor. Nothing further at this time. My
21 apologies.

22 THE COURT: All right.

23 Mr. Eiser, you may examine the witness.

24 MR. EISER: Thank you, Your Honor.

25 - - -

1 **CROSS-EXAMINATION**
2 - - -
3 **BY MR. EISER:**

4 Q. Good afternoon, Ms. Gutberlet.

5 A. Good afternoon.

6 Q. Can you tell the judge where you were born and raised?

7 A. Born and raised in Baltimore, Maryland.

8 Q. And give him a summary of your education.

9 A. Education, started a two-year associate's degree,
10 bachelor's degree, undergrad in computer science, and master's
11 degree, MBA.

12 Q. Tell us about your work experience after your schooling.

13 A. Work experience, entered the police department as a police
14 cadet, worked in the crime lab doing forensics.

15 Q. I'm sorry. That's the Baltimore Police Department?

16 A. Baltimore Police Department, Baltimore City, yes, sir.

17 Then went from training academy, to police officer, to
18 detective, to detective sergeant, to detective lieutenant, to
19 commander major.

20 Q. Can you describe your training and experience in law
21 enforcement investigation.

22 A. Sure.

23 **MR. GREENBERG:** Objection, compound and vague.

24 **THE COURT:** I'm not sure.

25 **MR. GREENBERG:** Objection, compound and vague.

1 **THE COURT:** State the question again.

2 **MR. EISER:** Can you explain your training and
3 experience for law enforcement investigations.

4 **THE COURT:** Overruled.

5 Go ahead.

6 **THE WITNESS:** Training initially was in all patrol
7 functions, arrest functions, detention functions, investigative
8 functions --

9 **BY MR. EISER:**

10 Q. Excuse me, ma'am. Can you speak a little bit slower for
11 the court reporter.

12 A. Sure. Sorry, apologies.

13 Investigative in vice, in narcotics, homicide, many, many,
14 many shootings, many murders.

15 Q. Did you know Mr. Annappareddy prior to your assignment in
16 this case by the -- let me finish up with -- you were in the
17 Baltimore Police Department, how many years?

18 A. Just shy of 25; 24 and nine months.

19 Q. Then you left --

20 A. Retired.

21 Q. -- in what year?

22 A. Left in 2004.

23 Q. What was the next job?

24 A. The next job was working for defense contractor Science
25 Applications International, where I led a law enforcement

1 centric government DHS program for the testing of equipment for
2 first responders.

3 And then from there, I then worked for the Attorney
4 General, state of Maryland.

5 Q. And in the Maryland Medicaid Fraud Control Unit?

6 A. Yes, sir.

7 Q. Did you know Mr. Annappareddy before you were assigned to
8 this case?

9 A. I did not.

10 Q. Did you know anybody who knew him?

11 A. I did not.

12 Q. Had you ever heard of him through any person or source?

13 A. No, sir.

14 Q. When were you assigned this case, the Annappareddy
15 criminal case?

16 A. I was assigned -- it was the day that a phone call came
17 into my supervisor, Peggy Gayhardt, from, at that time an
18 as-yet identified individual that was later determined to be
19 Mr. Tokofsky. I'd have to refer to the memo for the date.

20 Q. You have the Government's exhibit notebook up there?

21 A. I do.

22 Q. Okay. I'm going to ask you to turn to -- actually, you
23 also have Plaintiff's exhibit notebook up there?

24 A. I do.

25 Q. So I'll ask you to turn to Plaintiff's Exhibit 12. Can

1 you identify what that is?

2 A. Exhibit 12 is a memorandum dated 5/3/2012 from
3 Peggy Gayhardt.

4 Q. Is that the anonymous -- is this document the anonymous
5 call that came in?

6 A. Yes. This document summarizes the intake of the original
7 phone call.

8 Q. Okay. Now, can you read just the highlighted last
9 sentence there that I have on the screen, about what Mr. --
10 that the anonymous caller told you.

11 A. The last sentence reads: "The caller stated that the
12 pharmacist was not reversing billings to medicate within the
13 required 14 days after a prescription was not picked up or
14 delivered. The caller said that the owner kept the Medicaid
15 reimbursement, and as a result, he suspected the owner of
16 Medicaid fraud."

17 Q. And this memo was provided to you as well?

18 A. Yes.

19 Q. Who is -- this is written by Peggy Gayhardt. Who is she?

20 A. Peggy Gayhardt was my immediate supervisor in the Medicaid
21 Fraud Control Unit.

22 Q. And what happened after this call came in?

23 A. That then prompted me to take a look and start to
24 investigate this case.

25 Q. Okay. I'm going to ask you to turn to -- the

1 United States Exhibit 1.

2 Did you -- well, first, I want you to look at, on
3 Defense Exhibit 1, this is a memo from you; is that right?
4 That you prepared?

5 A. Yes.

6 Q. And you provide some of the history about this anonymous
7 call?

8 A. Yes.

9 Q. But it looks to me like you also went to the history
10 through Maryland Medicaid's records to see if there had been
11 any prior complaints about --

12 A. Yes --

13 Q. -- Pharmacare?

14 A. -- that's common practice to do such.

15 Q. And you saw that there had been a complaint by a patient
16 by the name of Kimberly Robinson; is that right?

17 A. Yes.

18 Q. And she was complaining about receiving AIDS drugs, and
19 she didn't have AIDS at the time.

20 A. Correct.

21 Q. And your office simply closed the file at that point,
22 thinking it was an administrative oversight?

23 A. Well, after looking into it, a reasonable person would
24 deduce that perhaps it could be an administrative error.

25 Q. Okay. And then in June of 2011, you received a second

1 complaint -- or saw it in the file, a second complaint --

2 **MR. GREENBERG:** Objection, leading.

3 **THE COURT:** Do you want to rephrase the question.

4 **BY MR. EISER:**

5 **Q.** In your search through the file, did you see a second
6 complaint?

7 **A.** I did.

8 **Q.** What did you see?

9 **A.** About mid-June 2011, it involved a prescription for
10 Atripla, and the intended recipient did not receive the drug.

11 **Q.** Okay. And what did you do about it? Or what did the
12 Maryland Medicaid office do about it at the time?

13 **MR. GREENBERG:** Objection, assumes facts. Lack of
14 foundation.

15 **THE COURT:** What was the basis of the objection?

16 **THE WITNESS:** Lack of foundation. He's assuming that
17 they did something.

18 **THE COURT:** Overruled.

19 Go ahead.

20 **THE WITNESS:** Okay.

21 Upon looking at this, what we found was an individual that
22 had tried to get a prescription refilled for the HIV drug
23 Atripla at a Johns Hopkins pharmacy in close proximity to the
24 hospital, and found out that he could not get that filled.

25

1 BY MR. EISER:

2 Q. And then that complaint was brought to Pharmacare
3 directly; is that right?

4 A. I'm sorry, what is that?

5 Q. I'm looking at your report about what became of
6 Mr. Bates's complaint about his AIDS medicine.

7 A. After it was brought to his attention, then several days
8 later, he got the home delivery of his prescription, as he
9 should have.

10 Q. Okay. And what did your office do?

11 A. Well, given at that point there were two occasions where
12 perhaps they could have been administrative, it required a
13 look-see to see if there was anything beyond that. And that
14 beyond that came by way of the phone call that Peggy Gayhardt
15 received --

16 Q. Right.

17 A. -- from the gentleman, Mr. Tokofsky.

18 Q. Okay. So that would be -- the call was May 3rd of 2012?

19 A. Yes.

20 MR. GREENBERG: Your Honor, I hesitate to object
21 again, but there is a lack of foundation for this document.

22 THE COURT: All right. See if you can lay a
23 foundation.

24 BY MR. EISER:

25 Q. This is your document, isn't it?

1 A. What are we referring to, the report? Yes.

2 THE COURT: Overruled.

3 MR. EISER: And it's -- just to be sure, the
4 Defendant's Exhibit 1 is in evidence; is that right?

5 THE COURT: Is that one of the ones that stand without
6 objection?

7 MR. FLOWERS: Yes, sir.

8 MR. GREENBERG: Subject to the caveat, yes, Your
9 Honor.

10 THE COURT: All right.

11 BY MR. EISER:

12 Q. On Page 3 --

13 THE COURT: I'm told the Plaintiff used this on
14 direct; is that right?

15 MR. GREENBERG: Used it on direct to show state of
16 mind, yes.

17 THE COURT: All right. Objection is overruled.

18 BY MR. EISER:

19 Q. All right. On Page 3 of United States Exhibit 1, it has a
20 bit more detail about his initial call to Peggy Gayhardt. And
21 it notes that Peggy Gayhardt had encouraged the caller to meet
22 with an attorney to discuss a *qui tam* action; is that right?

23 A. Yes.

24 Q. Is that common?

25 A. Yes.

1 Q. And why is that?

2 A. Because they're equipped to navigate them through the
3 entire process because a layperson would not know really what
4 to do, how to handle, how to progress through it.

5 Q. Okay. And does that also encourage the whistleblower to
6 come forward with this information?

7 A. Yes, yes.

8 Q. And that's why Ms. Gayhardt would have encouraged him to
9 do that; is that right?

10 A. Yes, yes.

11 Q. Now, Exhibit 1 also notes that you and another Maryland
12 Medicaid investigator, Shelly Martin, attempted to call
13 Mr. Tokofsky on June 4th of 2012, and left a message; is that
14 right?

15 A. Yeah.

16 MR. GREENBERG: Objection to the leading.

17 THE COURT: You're just reading from what the memo
18 says, right?

19 MR. EISER: Yes, sir.

20 THE COURT: I'll overrule the objection.

21 MR. EISER: I'm just trying to summarize it.

22 BY MR. EISER:

23 Q. So on June 11th, Ms. Martin received a call from
24 Tokofsky's *qui tam* lawyer advising they would be willing to
25 submit to an interview; is that right?

1 A. Yes.

2 Q. You met with Mr. Tokofsky at his home on June 18th; is
3 that right?

4 A. Yes.

5 Q. And you've documented that on Page 4?

6 A. Yes.

7 Q. Now, this must have been a lengthy interview. Your report
8 of it, Defense Exhibit 1, runs some 20 pages; is that right?

9 A. Yeah, 20 pages.

10 Q. Fair -- do you know how long this interview was?

11 A. Several hours.

12 Q. Why was it so long, and why did it take so long?

13 A. Mr. Tokofsky had a lot of information that he wanted to
14 convey to me, and so my note-taking made sure that I captioned
15 all that he wanted to share.

16 Q. Okay. In his -- in this interview, he provided you a good
17 deal of information about Pharmacare's operations; is that
18 right?

19 A. He did.

20 Q. I want to ask you something that -- what you've written on
21 Page 9. Can you read the highlighted information on Page 9?

22 A. Yes.

23 "Again, Tokofsky cited the discussion regarding Reddy's
24 practice of bringing immigrants from India, sponsoring them,
25 housing them, and paying their visa costs, and then placing

1 them in various pharmacies to ensure business conducted was
2 conducted the way that Reddy wants it done."

3 Q. How did that come to be significant to you in the course
4 of your investigation?

5 A. It was very significant because what we found was that the
6 reversals, or lack of reversals that were not being done and
7 automatic refills that were being done, were being done by
8 those employees of Middle Eastern descent.

9 Q. You come back to this subject a bit on Page 13. Can you
10 read for the judge the highlighted section there?

11 A. Yes.

12 "Tokofsky believes, based on his observation, Reddy
13 fosters an intimidating environment to create a perceived
14 arrangement of indentured servitude with the immigrants. He
15 has observed Reddy frequently yell at them, threaten them, and
16 exclaim to them that, quote, 'He will send them back if they
17 are noncompliant with his requests while working in his
18 pharmacies.'"

19 Q. Can you turn to Page 14 of your report. Here, Tokofsky
20 seems to -- is telling you about the undelivered prescriptions
21 that he found?

22 A. Yes.

23 Q. Can you just tell us -- or read the highlighted section
24 what -- about what Tokofsky told you.

25 A. "Tokofsky discussed perhaps the most disturbing incident

1 that he experienced while working at Pharmacare. He spoke
2 about finding a large number of filled prescription bags
3 contained within two pharmacy tubs at the pharmacy previously
4 located at 2227 Old Emmorton Road. This discovery occurred in
5 January 2012, when Tokofsky was assisting in moving materials
6 and equipment from the Old Emmorton Road location to the then
7 soon-to-be-opened pharmacy at 208 Plumtree Road. While
8 clearing out the back room, Tokofsky located two pharmacy tubs,
9 which he described similar to Rubbermaid tubs but with
10 interlocking folding lids. Inside of the tubs, he claims to
11 have located approximately 200 filled prescriptions. As he
12 looked through the bags, he noted the dates and several names.
13 Many of the prescriptions were dated as much as six months
14 prior to his arrival at Pharmacare, August of 2011, dating back
15 as far as February 2011. Further, as he looked at the patient
16 labels affixed to the front of each prescription bag, he noted
17 that many of them contained Med-4 drugs."

18 Q. Thanks.

19 And what are Med-4 drugs?

20 A. Med-4 drugs was of the name classification given to drugs
21 that were high dollar, most notably HIV drugs, cancer drugs,
22 and psych -- antipsychotic drugs.

23 Q. What did Mr. Tokofsky tell you about what Mr. Annappareddy
24 told him to do about the prescription labels that he found?

25 A. He said that he would take care of it.

1 Q. All right. And did he tell Mr. Tokofsky to rip the labels
2 off the prescriptions?

3 A. Yes, he did.

4 Q. Why is that, if you know?

5 A. Well, I later learned that it was so that these drugs
6 could be reshelfed, reused.

7 Q. Now, this event was quite significant for Mr. Tokofsky.

8 A. Yes.

9 Q. He said that the place was beyond fixing.

10 What did he mean by that?

11 A. Well, he had previously worked at Rite Aid, so he had a
12 good working knowledge of the pharmacy system and the
13 organizational structure that would be in place. And when he
14 seen the things that he was seeing at that time, he was
15 disturbed by it.

16 Q. Did you set up a follow-up interview with Mr. Tokofsky?

17 A. I did.

18 Q. And why was that?

19 A. Well, to verify from -- initially, the information that he
20 gave me, I wasn't going to take it at face value. So I wanted
21 to go back to the office and do some investigation and to, you
22 know -- to look at his credibility here. To see if what he is
23 telling me certainly has validity to it.

24 Q. So you didn't just take what he told you --

25 A. Correct.

1 Q. -- you had to corroborate it?

2 A. Yes.

3 Q. Your follow-up interview was on August 23rd, 2012; is that
4 right?

5 A. Yes.

6 Q. And is it documented in Defense Exhibit 7, a memo of yours
7 dated September 5th, 2012?

8 A. Yes.

9 Q. All right. In this interview, Mr. Tokofsky talked to you
10 about some more of Pharmacare's business practices. And he
11 told you about a lot of unusual practices, other than the
12 reversal thing; is that right?

13 A. Yes.

14 MR. GREENBERG: Objection. Assumes facts not in
15 evidence, unusual.

16 THE COURT: Overruled.

17 BY MR. EISER:

18 Q. All right. You've noted here on Page 4 of your report
19 that Tokofsky described a practice as steering, citing that a
20 pharmacy cannot steer potential clients to their services. He
21 emphasized that Pharmacare has done this extensively, so much
22 so that he believes there are many illegal practices being
23 conducted to generate business.

24 What did Tokofsky tell you about steering? What does that
25 mean?

1 A. Well, he explained that the way the organization had been
2 established was to have an individual classified as a clinical
3 liaison at various behavioral health facilities, and that they
4 were set up similarly with the desk, the phone, the fax, et
5 cetera, and they were strategically positioned as a patient
6 would come out of the doctor's office. And most times,
7 unknowingly, the patient doesn't know they have an option, they
8 would just hand over the prescription to this clinic liaison,
9 who would then fax it to the Plumtree location.

10 Q. And is that suspicious?

11 A. It may be unethical.

12 Q. I want to go back for one second to Page 1. Your report
13 notes that there's a lot of people present for the second
14 interview of Mr. Tokofsky. Do you see that on Page 1?

15 A. Yes, I do.

16 Q. How is it that they all came to be at this second
17 interview?

18 A. Well, the attorney that I worked for is listed first, one
19 left side, Catherine Pascale. And due to the information that
20 was coming to light as this investigation progressed, she felt
21 the prudent thing to do would be to reach out to the federal
22 prosecutors. And it was based on their discussion that it was
23 to -- a meeting would convene with the key players both at the
24 state level and the federal level.

25 Q. All right. And at this interview, he, again, discussed

1 Mr. Annappareddy's use of his H1B immigrant employees?

2 A. Yes.

3 Q. What I want to ask you about is this sentence here at the
4 bottom. Mr. Tokofsky is telling you that he would sometimes
5 correct the H1B employees. And what would happen after he
6 would correct them and tell them to do something?

7 A. If he found a discrepancy or something wasn't being
8 followed as it should, he would address it with the particular
9 employee but to no avail, because whenever he instructed, as
10 high position that he was, whenever he instructed them, it was
11 always followed by Annappareddy telling them, "Don't listen to
12 him, do it this way."

13 Q. And can you read the highlighted section starting at the
14 bottom on Page 4, where Mr. Tokofsky gives you an example of
15 that process.

16 A. Yes.

17 "Tokofsky used as an example his reminder email, which
18 instructed pharmacy personnel to ensure that reversals were
19 completed in a timely fashion. This directive was followed by
20 Annappareddy sending out notice to all pharmacy personnel that
21 reversals cost the company money, and they should not be done.
22 Tokofsky believes that by Annappareddy having strategically
23 placed the Middle Eastern interns in all of his stores, that
24 his directions, albeit illegal, are followed to the letter.
25 The interns are 100 percent compliant to Annappareddy, they do

1 not question any direction he may give them. Tokofsky
2 specifically mentioned Jigar and Vipin as being enslaved to
3 Reddy. Vipin is identified as" -- forgive me I don't want to
4 mispronounce the name. And then Jigar he identified, as
5 written in the document, again. I don't want to mispronounce
6 the name.

7 Q. Those two that you've just identified, they worked at the
8 Plumtree store; is that right?

9 A. Yes, they did.

10 Q. Mr. Tokofsky also told you about violation of labor laws;
11 is that right?

12 A. Yes, he did.

13 Q. What did he tell you about that?

14 A. It was his observations that he had these interns that he
15 would sponsor. And in order for them to be here and to work,
16 they had to have the sponsorship to be able to stay here. And
17 as a result of that, there was housing that was provided at
18 times, and that there were often threats that he would send
19 them back to India if they did not comply and do what he asked
20 them to do.

21 Q. Okay. Did -- Mr. Tokofsky also told you about the
22 stockpiling of old prescriptions.

23 A. Yes.

24 Q. I'm just reading the first line there, it says, "Tokofsky
25 cited the industry standard of the 14-day requirement in which

1 to complete a reversal of a paid claim."

2 A. Yes.

3 Q. What was Tokofsky's position at Pharmacare?

4 A. Chief -- excuse me -- chief COO, I believe it was, chief
5 operating officer.

6 Q. We'll go through these other interview reports. But all
7 the interviews that you took of these employees at Pharmacare,
8 of those who told you about the time limit for reversals, did
9 all of them tell you it was 14 days?

10 A. Yes, they told me 14 days.

11 Q. These are their own employees, Mr. Annappareddy's
12 employees --

13 A. Yes.

14 Q. -- they all told you there's a requirement for 14-day
15 reversals.

16 A. It's a practiced industry standard, whether it's private
17 or state insurers.

18 Q. Can you read the highlighted section at the bottom of
19 Page 5?

20 A. "If no pick up/delivery has been made by the 13th day, it
21 is incumbent on the pharmacy technician or pharmacist to
22 complete a reversal of the claim. This reversal of the claim
23 must be completed by the conclusion of the 14th day. This is
24 the industry standard and one that's not being adhered to at
25 Pharmacare. Because this protocol was not in effect nor

1 enforced at Pharmacare, old, undelivered prescriptions would be
2 tossed daily into pharmacy bins and left to accumulate until
3 the bins were overflowing. Tokofsky advised Annappareddy of
4 this problem, and Annappareddy indicated he would take care of
5 it. To Tokofsky's knowledge, this never happened. Further,
6 Tokofsky became aware of one of his employees, Mary Sue Cramer,
7 finding bins of filled prescriptions in Annappareddy's office.
8 Tokofsky further explained that it was not uncommon to find
9 bins all around the pharmacy that contained bags of undelivered
10 prescriptions. These prescriptions were dated, and
11 approximately 90 percent of them were never reversed with
12 Medicaid."

13 Q. Did Mr. Tokofsky, also discuss unauthorized refills, the
14 practice of unauthorized refills at Pharmacare?

15 A. Yes.

16 Q. Can you tell us what you've noted in the highlighted
17 section on Page 7 about that?

18 A. Well, he discussed that automatic refills for the
19 clients/patients, would be done without their knowledge and/or
20 consent. It was just a common practice of completing the
21 automatic refills.

22 Q. And he told you that there's automatic refill
23 authorization forms that should be signed, but they weren't
24 even presented?

25 A. Yes. You would have to opt in to have that.

1 Q. Can you read the highlighted section in the second
2 paragraph there on Page 7 about what Mr. Tokofsky told you
3 about the automatic refill process.

4 A. Okay.

5 "At the end of the month" -- again, my pronunciation, I
6 believe it's Mannava -- "travels from his Washington D.C. store
7 to the various stores in the region and fills prescriptions
8 from each store for each client who is eligible. Mannava
9 completes this action at every store because Pharmacare's
10 computer system is not linked to a central server and they
11 operate independently. According to Tokofsky, the lead
12 pharmacist at the Plumtree location, Lisa Ridolfi, is aware
13 Mannava is doing this on a regular basis, and she's not happy
14 about it. It's Ridolfi's name that's listed as the pharmacist
15 who fills the prescriptions. When Ridolfi realized that was
16 occurring, she advised Tokofsky. Tokofsky tried to address the
17 matter with Annappareddy but was told things would be taken
18 care of. Tokofsky was not made aware of any corrective
19 measures that were put in place to rectify the ongoing process
20 of filling prescription refills without the pharmacist's
21 knowledge or the client's consent."

22 Q. Is this information corroborated by what you had heard
23 from Tokofsky earlier?

24 A. Yes.

25 Q. Now, on Page 4 of your report, it says that, "Tokofsky

1 estimated that no less than two out of every 10 prescriptions
2 never make it to the patients, and no reversals are ever
3 conducted."

4 Now, we've heard quite a bit this morning about this
5 70 percent estimate that Tokofsky had in his *qui tam* complaint.
6 And here, he's saying it's two out of 10. Do you -- what's
7 your reaction to that? Is this -- is Mr. Tokofsky ballparking
8 it here?

9 A. He's just -- based on his observations, he's just throwing
10 estimates out there. He has no idea of the volume or magnitude
11 of this because he does not look at paid claims information on
12 the back end, like I do.

13 Q. We'll get to that. It's in your subsequent reports.

14 But Tokofsky also told you that doctors would often call
15 Pharmacare claiming that they discontinued a particular
16 medication for a patient and would question why Pharmacare was
17 continuing to fill the refills for the patient. Do you
18 remember telling me that?

19 A. Yes.

20 Q. How is that significant in your investigation?

21 A. Well, in that if an individual has a given prescription
22 and with three -- two, three, four, refills, but then the
23 doctor decides that's perhaps not the right medication for that
24 individual and prescribes something else, you still have the
25 refills out there in the patient profile that can be refilled

1 and were refilled, most often.

2 Q. Now, again, you didn't just accept Mr. Tokofsky's
3 assertions --

4 A. Correct.

5 Q. -- you checked them out; is that right?

6 A. Yes.

7 Q. Can you turn to Defense Exhibit 4. And Defense Exhibit 4
8 is a memo you prepared dated August 21st, 2012; is that right?

9 A. Yes.

10 Q. And on Page 2, it lists some Medicaid recipients. Can you
11 tell the judge, what were you doing here in Defense Exhibit 4
12 regarding these patients?

13 A. Well, I wanted to do an interview of these individuals, so
14 I found them at their residence and discussed with them what
15 their prescription was, what it is, what their regimen is,
16 where they would get the prescriptions filled, the clinics they
17 went to, just to get background information on it.

18 Q. And what did you learn in terms of the significance for
19 the investigation?

20 A. Well, that they were taking -- one of them was taking a
21 combination of HIV drugs, three different drugs, and she
22 stopped taking them in January of 2012 because the healthcare
23 provider said she needed additional blood tests because the
24 doctor had moved, and she didn't want to travel to another
25 location.

1 And so presented for one prescription where she didn't get
2 refills, but yet they were refilled.

3 **Q.** And that would be a patient Sheena Buggs; is that right?

4 **A.** Yes.

5 **Q.** What did you learn regarding patient Anita Mayers?

6 **MR. GREENBERG:** Your Honor, this is HIPAA information.
7 I don't know how you want to handle it.

8 **THE COURT:** Well, I think I have the authority to
9 override HIPAA.

10 **MR. GREENBERG:** If Your Honor does, then I withdraw
11 the point.

12 **THE COURT:** Go ahead.

13 **BY MR. EISER:**

14 **Q.** What did you learn regarding Ms. Mayers?

15 **THE COURT:** Maybe we better seal this portion of the
16 transcript. If the court reporter could just make a note that
17 this might get into some personal privacy records, and this bit
18 of testimony will be sealed.

19 **THE WITNESS:** Okay. I'm sorry, the question?

20 **THE COURT:** Go ahead.

21 (Page 159, Line 21 through Page 160, Line 21 is under
22 seal.)

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(End of sealed portion. No testimony was omitted.)

MR. GREENBERG: Your Honor, I'm just going to object to using this memo for the truth of any matter asserted. It can be used for Ms. Gutberlet's state of mind, other agents' state of mind, but not for the truth.

1 **THE COURT:** What's the response?

2 **MR. EISER:** I don't even understand the objection.

3 This is her own report, taken at the time of what was told to
4 her by a witness. It's authentic. It's --

5 **THE COURT:** I think her state of mind is important, so
6 I'll overrule the objection. It's her report.

7 **MR. EISER:** I would submit that it should be admitted
8 for all purposes.

9 **THE COURT:** I agree. Overrule the objection.

10 Admitted.

11 **BY MR. EISER:**

12 Q. Were we finished, with Ms. Mayers?

13 A. Well, it just showed that the paid claims analysis after
14 the fact showed that there was billings for those three drugs
15 previously mentioned.

16 Q. Okay. Ms. Shaw, did you find a similar situation?

17 A. Yes.

18 Q. Patient being billed -- well, the insurance company being
19 billed or the government being billed --

20 A. Yes.

21 Q. -- and the drugs not being received by that patient?

22 A. Verified through paid claims data analysis.

23 Q. How did you verify that? Where did you get that paid
24 claims information?

25 A. Well, that's something, as an investigator, we have access

1 to through the database through the State of Maryland that we
2 can put in the individual's name, date of birth, Medicaid
3 number, do searches, identify an individual, and then we
4 request paid claims to show what drugs, who the provider is,
5 what their NDP is, what the cost was, and what Medicaid paid
6 the pharmacy.

7 Q. How did you come to investigate these three in your paid
8 claims analysis at this time?

9 A. I believe these would have been the names that were
10 provided by Mr. Tokofsky, that he found in prescription bags
11 with labels.

12 Q. And then you found this information and it verified what
13 Tokofsky was telling you?

14 A. It did.

15 Q. Can you turn to Defense Exhibit 8. This is a document
16 that's been admitted. This is a memo of yours dated
17 September 12th, and it's your interview with Mary Sue Cramer;
18 is that right?

19 A. Yes.

20 Q. Who is Mary Sue Cramer?

21 A. Mary Sue Cramer was a former employee at Pharmacare.

22 Q. How did you get her name?

23 A. Her name came to me by way of Mr. Tokofsky.

24 Q. Okay. What was her position with Pharmacare?

25 A. Compliance, mostly. But then she was relegated to do

1 others duties as well. But she was a pharmacy technician, so
2 she was hired to work as a scheduler, an auditor, and to ensure
3 compliance.

4 Q. What does that mean, "compliance"? Looks like on your
5 report, she was initially hired as a compliance officer, what
6 does that mean? Complied with what?

7 A. That all of the laws, the rules, the regulations, the
8 background, protocol, everything should be adhered to make sure
9 that everything was ran above board.

10 Q. That was her job?

11 A. That was her job.

12 Q. And while doing that job, did she encounter any problems
13 with Mr. Annappareddy?

14 A. Yes, she did.

15 Q. How so?

16 A. Well, she would find things and she realized that that was
17 not acceptable practice, and she would try to implement change
18 or admonish an employee to try to get corrective action and was
19 shut down by Mr. Annappareddy to not do that.

20 Q. Can you tell us, read for the judge what we've highlighted
21 here on Page 2 of the highlighted section?

22 A. Yes.

23 "Early in her tenure, she was aware that many policies
24 were not being followed, and in some cases, they were being
25 completely ignored. This was troubling to Cramer, as she was

1 responsible for ensuring compliance on all levels. Once Cramer
2 became fully engaged in her position, she repeatedly initiated
3 corrective actions and attempted to put corrective measures in
4 place. This is where she became embroiled in daily disputes
5 with Annappareddy. Cramer claims that Annappareddy repeatedly
6 rebuked her efforts by telling her not to advise staff on
7 procedures, nor to ever put out any mass email communication
8 instructing them how to do business. Cramer found this type of
9 response unsettling on several levels. First, she knew the
10 company was not acting or performing in an ethical or legal
11 fashion; secondly, she knew standard industry protocols were
12 being ignored; and lastly, she believed the company was
13 committing acts of fraud through their handling of Medicaid
14 patients' prescriptions."

15 Q. On the next page, you've highlighted the allegations of
16 noncompliance. Can you read the highlighted sections?

17 A. "During Cramer's employment with Pharmacare, she became
18 aware of many violations, both regulatory and what she believes
19 to be criminal. She provided an explanation for each area of
20 deficiency that she identified and the corrective measures that
21 she tried to initiate. Many of the issues she discussed dealt
22 directly with the process of how prescriptions were filled and
23 dispensed to Medicaid recipients."

24 Q. Can you read the next section that's highlighted.

25 A. "According to Cramer, Annappareddy strategically places

1 these workers in each of his stores to ensure he can run his
2 business in the fashion that he chooses to with disregard to
3 U.S. laws, state regulations, and Medicaid policies. By having
4 a Middle Eastern worker, both pharmacist and pharmacy
5 technician, in each of his stores, he's able to facilitate his
6 way of doing business. Cramer indicated the interns are
7 terrified of Annappareddy, as he often threatens to send them
8 back if they do not do what he tells them to do. They live
9 under fear of deportation and always comply with any request or
10 demands he makes."

11 **THE COURT:** Let me jump in here just a minute.

12 On all of these exhibits we've been going through on both
13 sides, on the screen, I see the full exhibit and we have
14 highlighting; the Plaintiff was yellow, the defense was blue.
15 But in my exhibit notebook, we don't have the highlights. And
16 I'm concerned when I go back to South Carolina to figure out
17 what to do in this case, it's going to be hard for me to go
18 back and isolate those passages that are more important.

19 **MR. EISER:** I'll provide those to you.

20 **THE COURT:** I was going to say, before the case is
21 over, can we get a new submission from both sides with your
22 highlighting on them?

23 **MR. EISER:** Yes, Your Honor.

24 **MR. GREENBERG:** Yes, Your Honor. On the same note, I
25 think Mr. Eiser misspoke and said that Ms. Gutberlet

1 highlighted something, but I believe it was the Government who
2 highlighted, if I understood correctly.

3 **THE COURT:** I'm sorry. When you had the witness, you
4 put up some documents and highlighted some things too, didn't
5 you?

6 **MR. GREENBERG:** Correct. So to Your Honor's point,
7 yes, we highlighted text and showed it and had the witness read
8 it. We'll be able to submit that as Your Honor requested. I'm
9 just pointing out that a couple questions ago, and I think it
10 was just a slipup, that Mr. Eiser I think made it sound like it
11 was Ms. Gutberlet the one that did the highlighting here. But
12 maybe I misunderstood.

13 **THE COURT:** All right.

14 **BY MR. EISER:**

15 Q. I'm moving on to Page 5.

16 **MR. EISER:** Sorry, I apologize.

17 **THE COURT:** Go ahead.

18 **BY MR. EISER:**

19 Q. What did Ms. Cramer tell you about prior authorizations?
20 And I'm going to ask you a question, but go ahead and just read
21 the highlighted section on Page 5.

22 A. "Cramer explained that the process includes having a
23 designated telephone line that employees call from. They call
24 the insurer's office, mostly Medicaid, and they misrepresent
25 themselves as a representative of a doctor's office claiming

1 they're calling to receive a prior authorization for patients."

2 Q. We had talked about the number of issues that Mr. Tokofsky
3 had raised, not just the reversals.

4 Now, this is a new one. I don't think Tokofsky told you
5 about this method of prior authorization. Is that because
6 Ms. Cramer, in her position, was able to see this?

7 A. Yes, based on her own observations.

8 Q. Okay. Again, on Page 7, can you read the highlighted
9 section that Ms. Cramer told you --

10 A. "According to" -- I'm sorry.

11 Q. -- Sorry. This is regarding the medication error report.

12 A. Okay.

13 "According to Cramer, at no time did she ever see or was
14 ever aware of the pharmacy technicians completing reversals to
15 Medicaid or other insurance carriers for the prescription drugs
16 that were never delivered to patients. She only knew they were
17 discarded in the bins, and the bins were allowed to fill up
18 until they were overflowing. On one occasion, she observed
19 Annappareddy and Guruvareddy loading up filled bins into their
20 cars, and they took them to an undisclosed location. Cramer
21 cited the industry standard of 14 days as a maximum time frame
22 that a pharmacy has to complete reversals. Further, she cited
23 a mandate that the reversals should be done daily, but no later
24 than the 14th day after the prescription has been filled or not
25 delivered or picked up. Cramer then provided to me photographs

1 she had taken with her iPhone. These photographs were of the
2 bins that were overflowing with filled prescriptions that had
3 been sitting there well after the 14-day period, some dating
4 months back. Further, there were photographs of prescriptions
5 stuffed into Target plastic shopping bags that were situated
6 next to the full-size bins. These photographs were taken just
7 prior to Cramer's departure from Pharmacare in July of 2012.
8 She explained that this was the norm around there, and that on
9 any given day one would find overflowing bins of drugs that had
10 not been delivered nor reversed. It became so problematic
11 because the bins were lining the walkways and impeding the
12 egress for employees where they had to shuffle around them.
13 She cited one incident that occurred in the latter part of 2011
14 or early 2012 when she complained to Annappareddy about the
15 drugs lying around everywhere. The next day, the plastic bins
16 were removed. Later that day, she witnessed Ram open
17 Annappareddy's office door, a door that remains locked when
18 he's not there, and she observed floor-to-ceiling plastic
19 pharmacy bins of drugs that were previously located in the
20 common areas of the pharmacy. She realized these were the
21 drugs that Annappareddy and Guruvareddy moved after she
22 complained. Later that day, she observed the drugs removed
23 from the bags but still in the plastic bins."

24 Q. Go ahead and finish reading out that paragraph, please.

25 A. "She does not know what happened to the pharmacy bags or

1 labels that were affixed to them. At day's end she observed
2 Annappareddy and Guruvareddy placing the bins of prescription
3 into their vehicles. She does not know where or how they were
4 disposed of. After removal of these bins, the process simply
5 repeated itself with new bins situated on the floor that were
6 utilized to discard the undelivered drugs into. She claims
7 this was common practice at Pharmacare, so much so that the
8 employees accepted it as the norm on how to handle undelivered
9 prescriptions."

10 Q. That's a lot of information here, a lot of, apparently,
11 suspicion; is that right?

12 A. Yes.

13 MR. GREENBERG: Your Honor, I have to object to the
14 commentary and leading on this.

15 THE COURT: Well, I'll sustain that objection.

16 MR. GREENBERG: Thank you, Your Honor.

17 BY MR. EISER:

18 Q. How did this information impact you? You had the
19 interview with Tokofsky. You didn't tell Ms. Cramer, anything
20 that Tokofsky told you, did you?

21 A. No.

22 Q. How did this impact the entirety of the investigation at
23 that point?

24 A. Well, now I have some corroboration here. I have
25 Tokofsky, at one point, tell me the very same thing that Sue

1 Cramer later conveyed to me as, which set the stage for me now
2 to go back and do paid claims analysis to find out when the
3 prescriptions were billed, refilled, et cetera, et cetera,
4 received, not received.

5 Q. So at this point, what are you thinking about your
6 investigation?

7 A. I'm thinking that I have a very broad case of Medicaid
8 fraud.

9 Q. Okay. Ms. Cramer gave you the names of some of the
10 Pharmacare employees; is that right?

11 A. Yes.

12 Q. Did you interview some of them?

13 A. I did.

14 Q. I'd ask you to turn to Government's Exhibit 9. This would
15 be your memo dated September 25th, 2012 --

16 A. Yes.

17 Q. -- regarding your interview of Nikkia Dansbury. Again,
18 she provided you a lot of information, but I just want to ask
19 you about one thing on Page 6.

20 MR. GREENBERG: Object to the commentary, Your Honor.
21 That "she provided you a lot of information."

22 THE COURT: Let's omit the commentary.

23 Sustained.

24 BY MR. EISER:

25 Q. Can you read for us the highlighted section on Page 6.

1 A. Yes.

2 "Those prescriptions that are not delivered are either
3 left in their respective bins for the next day or they are
4 removed and tossed into pharmacy bins that are located on the
5 floor of the pharmacy. This transfer comes from the carriers'
6 bins to the pharmacy bins, generally occurs between three to
7 four weeks after the prescription was filled and initially left
8 Pharmacare for delivery. Dansbury claimed the bins contained
9 old, non-delivered prescriptions that she suspects were not
10 reversed. When she spoke of this to the pharmacy technicians,
11 they pretty much ignored her."

12 Q. What was Ms. Dansbury's position at Pharmacare?

13 A. I believe she was the clinical liaison. I have to look
14 back here. I think she was the clinical liaison, initially.

15 Q. On Page 8, I want to ask you to read the highlighted
16 section about what Ms. Dansbury told you.

17 A. "On another occasion, Dansbury addressed the issue of the
18 accumulating drugs in the in-store pharmacy bins. Again she
19 was blown off" -- her words -- "blown off by Annappareddy.
20 This issue was again brought up by another Pharmacare employee,
21 Leshawn Miller. Miller served as a driver, and was later
22 promoted to driver supervisor. He worked closely with
23 Dansbury, and the two of them had close contact with the
24 prescriptions going in and out of the pharmacy each day. They
25 both discussed the issue of prescriptions not being reversed,

1 but when each of them tried to address it with Annappareddy,
2 they got nowhere. Dansbury claims she never saw a reversal
3 done unless a patient was going to another pharmacy or was
4 already in another pharmacy, trying to get their prescription
5 filled. In those cases, the pharmacist or pharmacy technician
6 at the other pharmacy, would call the pharmacy technician,
7 Vipin or Jigar, and tell them they had to go into their system
8 and reverse the charge for the medication that they allegedly
9 filled for the patient so that the newly selected pharmacy
10 could fulfill the prescription and bill Medicaid or whichever
11 third-party insurer provider they may have had. Dansbury
12 stated only in those circumstances did she ever witness Vipin
13 or Jigar willingly go to their computer and complete a
14 reversal."

15 Q. What does this tell you, this process, of billing, not
16 doing a reversal after not delivering, but if somebody
17 complains, they just give them the drugs or do the reversal; is
18 that what the process --

19 A. Correct. In simple form --

20 MR. GREENBERG: Objection, this is now multiple levels
21 of hearsay that's being asked about here in this document.
22 About -- I mean, this is a document that the witness wrote, but
23 it's recounting something that an interviewee said about
24 someone that someone else, someone else said. I mean, this is
25 inadmissible.

1 **THE COURT:** Well, it is multiple levels of hearsay,
2 but they all go to the effect of the words on the listener, the
3 state of mind of the person who received it. So I'll overrule
4 the objection.

5 **MR. GREENBERG:** Your Honor, just to be clear on the
6 objection, we don't object to state of mind.

7 **THE COURT:** All right.

8 Go ahead.

9 With that understanding, it's admitted.

10 **BY MR. EISER:**

11 Q. Okay. What does this process that Ms. Dansbury just
12 explained to you? How does that impact you as a law
13 enforcement investigator?

14 A. Well, simply put, at first glance when I look at this,
15 they would do the reversals when they got caught. Otherwise,
16 it would -- left unattended, it would be left as a billed
17 Medicaid or private insurer claim. It was only when they were
18 caught on the carpet and questioned about it did they take
19 action to reverse it.

20 Q. And the ones earlier you did your paid claims analysis,
21 nobody had complained about those; is that right?

22 A. Correct, correct.

23 Q. You also interviewed Caitlin Biemer; is that right?

24 A. I did.

25 Q. And that's documented in your report dated October 2nd,

1 2012, which would be Defendant Exhibit 10; is that right?

2 A. Yes.

3 Q. Who was Caitlin Biemer?

4 A. Caitlin Biemer, she was a former pharmacy tech with Rite
5 Aid. She was asked to come over and work -- she left Rite Aid
6 in 2011, and she was invited to come over by Dennis Tokofsky to
7 interview for a position of operations coordinator. She came
8 for an interview with Tokofsky and another employee at the
9 time. Went for a second interview, and she was offered the
10 position.

11 Q. I'm going to ask you, on Page 5 of this report, you've
12 documented some issues that she told you about handling of
13 non-delivered prescriptions. Can you read for the Court what
14 you've noted there.

15 A. "Handling non-delivered prescriptions: For those
16 prescriptions not picked up or delivered, they're handed off to
17 Hanuma Konda, Vipin, or Jigar, who places them in the plastic
18 pharmacy bins, which are located throughout the pharmacy area
19 for an indefinite amount of time. Biemer does not know what
20 eventually happens to the drugs. She explains she has
21 witnessed the bins fill, overflow, and then disappear. On more
22 than one occasion, Biemer has questioned Vipin and Jigar about
23 doing reversals on the non-delivered prescriptions. They
24 indicated to her that they would take care of the reversals;
25 and yet, Biemer repeatedly saw overflowing bins of

1 prescriptions just sitting in the pharmacy, Biemer was
2 concerned that Vipin and Jigar were not conducting the
3 reversals, so she took this information to Annappareddy and
4 advised him of her concerns. His relay to her was, 'I will
5 take care of it.' She saw no change in the number of
6 prescriptions that were lying around the store. On one
7 occasion in February of 2012, Biemer witnessed prescription
8 bottles filled with drugs dumped into bins. She was instructed
9 to assist Tokofsky in removing the HIPPA labels off the
10 bottles. She does not believe reversals of these drugs had
11 been completed. Biemer cited the industry standard of 14-day
12 reversal process, indicating that Pharmacare does not do
13 reversals. As an example, she explained that Rite Aid
14 Corporation uses a 12-day reversal standard so as to ensure
15 they do not exceed the 14-day deadline. Biemer cited that
16 failure to comply with reversals by the 14th day is a violation
17 of federal law."

18 Q. Did you check into that issue?

19 A. I did.

20 Q. What did you find?

21 A. We found it's not a violation of federal law, but more in
22 line with industry best practices standards.

23 Q. Okay. Now, does the fact that she got that wrong, does
24 that cause you not to believe anything she says?

25 A. No. This was just her perception of the law that she was

1 not that familiar with.

2 Q. Ms. Biemer also talked to you about Pharmacare's practice
3 for obtaining authorizations for refilling prescriptions. I'll
4 ask you about that. I'll ask you to read what's highlighted on
5 Page 7, and I'll ask you about it.

6 A. "Each day a designated Pharmacare employee notifies
7 insurance companies claiming to be the doctor's office or
8 clinic and provides pertinent information to obtain the
9 necessary prior authorization needed to refill a prescription.
10 The employee states the patient's name, the diagnosis, the drug
11 needed, the corresponding diagnosis and drug code. Pharmacare
12 possesses forms with the various doctors' signatures on them
13 that they use when they fax information to the insurance
14 companies. So according to Biemer, anytime Pharmacare wants to
15 complete an automatic refill, but needs a doctor's prior
16 authorization, they simply grab a form from within the office,
17 fill it out, and fax it to the insurance company without the
18 doctor's knowledge. Biemer stressed this a daily practice, one
19 that's repeated many times over the various -- through the
20 various insurance carriers, not just Medicaid. Further, she
21 indicated it's not uncommon for the person conducting the prior
22 authorizations to enter fake diagnoses codes."

23 Q. What did this information -- what did you do with it?

24 A. Well, this is telling me that there's fraudulent activity
25 going on, on behalf of the doctors, that they are filling their

1 own, basically.

2 Q. Now, you completed an interview of Lisa Ridolfi on
3 September 13th of 2012; is that right?

4 A. I'm sure -- I have to check the date.

5 Q. Let me show it to you.

6 A. Okay.

7 Q. That'll be United States Exhibit 22 -- sorry, this is
8 Plaintiff's Exhibit 22. This will be the first interview with
9 Ms. Ridolfi.

10 A. Yes.

11 Q. How did you come to interview Ms. Ridolfi?

12 A. Ms. Ridolfi came to my attention through Mr. Tokofsky.

13 Q. Okay.

14 A. In the interviews with him, he had indicated his
15 observations and what he observed going on there and said that
16 Lisa Ridolfi, who is also an employee, still at that time an
17 employee of the pharmacy, that she would likely be willing to
18 talk to me because she has recognized some of the things that
19 she has shared with me.

20 Q. Did Ms. Ridolfi come to you, or did you reach out to her?

21 A. I reached out to her.

22 Q. And that's because her name was given to you by --

23 A. Yes. By Mr. Tokofsky.

24 Q. It looks like your first interview was October 9th, 2012;
25 is that right?

1 A. No. I believe it was September.

2 Q. I'm sorry. September 13th, 2012.

3 A. Yes, that's correct.

4 Q. Can you read the highlighted portion on Page 26, what

5 Ms. Ridolfi reported to you.

6 A. "Under Pharmacare employment. Within a short time at

7 Pharmacare, Ridolfi became suspect about several in-house

8 practices that are kept hushed with a high degree of secrecy

9 maintained between Annappareddy and primarily two pharmacy

10 technicians of Middle Eastern descent, Jigar and Vipin.

11 Further, she explained" -- well, that's not highlighted, so

12 I'll stop there.

13 Q. Well, I do want you to read a section on the next page.

14 A. "For example, while Ridolfi is the pharmacy manager at

15 Plumtree, in theory, she's the boss, the person who should

16 direct the day-to-day business operations within the pharmacy.

17 In reality, the two technicians, Vipin and Jigar, actually run

18 things. This atmosphere was created by Annappareddy and he

19 demands this hierarchy be adhered to."

20 Q. What was Ms. Ridolfi's position --

21 A. She was the pharmacist.

22 Q. At the Plumtree store?

23 A. At the Plumtree store.

24 Q. And Ms. Ridolfi, did she also discuss the problem with the

25 reversals?

1 A. Yes, she did.

2 Q. I've highlighted on Page 8 of your report. Can you tell
3 us what she told you about reversals.

4 A. "Ridolfi stressed that she rarely ever sees reversals done
5 and that she personally has been told by Annappareddy never to
6 do them. The only time she's seen Vipin or Jigar complete a
7 reversal is either when they have a walk-in customer or a
8 customer on the telephone who is complaining that they're at
9 another pharmacy trying to get their prescription filled, but
10 are unable to do so because the transmitted data from the other
11 pharmacy to the third-party carrier precludes the third-party
12 carrier from again proving the drug for dispensing because the
13 system recognized it as having been filled by Pharmacare. When
14 these occasions surface, Ridolfi finds them to be suspect, but
15 notes that Vipin and Jigar are quick to jump on them and get
16 them rectified."

17 Q. Just to finish up that section, can you read on Page 9,
18 the highlighted section.

19 A. "Finally, after not seeing any changes in processes, after
20 talking with Tokofsky and Patel, Ridolfi took her concerns to
21 Annappareddy. During her conversation with him, she
22 point-blank asked him if there were auto refills being done
23 with her name associated with them. Annappareddy's response to
24 her was simply, a company line of, 'We ensure we fill all of
25 our customers' orders and deliver to them.' Ridolfi felt she

1 had gotten nowhere with any of the managers, nor the owner."

2 Q. Did you ask Ms. Ridolfi for the names of some patients?

3 A. Yes.

4 Q. Why were you asking for names of patients?

5 A. To do further analysis of paid claims.

6 Q. Okay. To see if they were billed, not delivered, not
7 reversed?

8 A. Right.

9 Q. And she gave you some names?

10 A. She did.

11 Q. And did you check those out?

12 A. I did.

13 Q. What did you find?

14 A. Time and time again, same pattern of activity where an
15 initial pharmacy fills the prescription, and then, within a
16 28-day period, minus a 3-day, because the insurance carriers
17 give you a 3-day grace period, that they would be automatically
18 refilled.

19 Q. You interviewed Ms. Ridolfi again about a week later; is
20 that right?

21 A. Yes.

22 Q. That would be Defense Exhibit 11, your memo dated
23 October -- your report dated October 11, 2012.

24 A. Yes.

25 Q. She had additional information about patients and

1 customers who were being billed for prescriptions --

2 A. Yes.

3 Q. -- they hadn't ordered; is that right?

4 A. Yes.

5 Q. And what did she tell you about that?

6 A. Let's see. So the follow-up, she was able to give me more
7 specific information about the clients that were not getting
8 medications, although they were rebilled.

9 Q. You went out and obtained the claims data --

10 A. I did.

11 Q. -- from Medicaid to check out this information?

12 A. I did.

13 Q. What did you find?

14 A. That, on more than one occasion, that these drugs were
15 billed, not reversed, and not delivered.

16 Q. You have the full report in front of you. How many pages
17 is it?

18 A. Of the second interview?

19 Q. Yeah.

20 A. The second interview will go -- 10, 11 -- 11 pages.

21 Q. Okay. And that included your paid claims analysis
22 attached to it?

23 A. Yes. Yes, of several different individuals.

24 Q. And for each of them, were there prescriptions that were
25 auto billed --

1 A. And not reversed.

2 Q. -- and not reversed?

3 A. Correct.

4 Q. Did you interview those patients?

5 A. Some of them, I did.

6 Q. Okay. And they corroborated what you had found?

7 A. Yes.

8 Q. You had a third follow-up interview with Ms. Ridolfi on

9 October 5th, 2012, which is documented in Defense Exhibit 12;

10 is that right?

11 A. Yes.

12 Q. And why did you interview her again?

13 A. She had additional information regarding previous

14 information she had provided on the two prior meetings on

15 September 13th and September 21st.

16 Q. Now, why don't you skip to Page 5. And just read for us

17 what's highlighted, and I'll ask you about it.

18 A. "She questioned Jigar as to why the labels were in the

19 baskets from prior dates. Jigar stated to Ridolfi, 'It was an

20 auto refill.' Ridolfi responded to Jigar, 'Then if it was an

21 auto refill, you should have billed it and filled it.' Jigar

22 responded to Ridolfi by stating, 'No, we bill it, and we only

23 fill it later when they ask for it. That's what an auto refill

24 is. You bill it, but you don't give it to them.' Ridolfi was

25 shocked at Jigar's response, and it was the first statement she

1 had ever heard from him, which provides insight into how he has
2 been conducting pharmacy business. Ridolfi exclaimed to me
3 that 'I couldn't determine at that moment if he was that inept
4 at what he was doing, or if he was so loyal to Reddy that he
5 would conduct business in this fashion and whether he realizes
6 the magnitude of what he was doing.' Ridolfi continued by
7 explaining that with this remark by Jigar, it sheds much light
8 on things that she's been dealing with, such as repeated
9 complaints from customers about nonreceipt of medications.
10 Having heard Jigar's outburst regarding prescriptions, she
11 explained why the labels in the bin were dated 6/18 of '12 and
12 9/21 of '12. These prescriptions were auto billed on 9/21 and
13 6/18 of 2012, but they were not filled. It was only because
14 the patient notified the pharmacy on 9/28 that prompted them to
15 fulfill two previously billed, but not filled, prescriptions.
16 One of the prescriptions, Micardis, had the quantity number
17 crossed out and a lesser number entered. This was a partial
18 fill. The issue of having the quantity crossed out and
19 replaced with a lower number lends itself to Pharmacare's
20 improper handling of partial refills. Ridolfi provided further
21 explanation of the improper/illegal practices of how Vipin and
22 Jigar handled those instances. For further detail on this
23 topic, it's provided in section entitled 'Partial Refills,' on
24 Page 8."

25 Q. This -- what she describes as an outburst by Jigar Patel,

1 how did that impact you and the investigation?

2 A. Well, that she was able then to recognize that what she
3 had been seeing has come to fruition, that she realizes that
4 Jigar and Vipin are doing automatic refills that are not in
5 line with compliance with what they should be doing.

6 Q. Okay. You had a subsequent interview with Ms. Ridolfi on
7 January 10th, 2013. Defense Exhibit 19; is that right?

8 A. Yes. December 14th.

9 Q. I want to ask you about it. Now, in this meeting, she
10 again provided you with information about the ongoing fraud at
11 Pharmacare and, in particular, she discussed the partial fills
12 and the owe book?

13 A. Yes.

14 Q. What did she tell you about that?

15 A. Well, she learned that it was a common practice that if a
16 prescription had indicated a quantity of 90, that they would
17 disburse perhaps 60, and it would not be noticed unless the
18 patient was that astute that could look at the prescription and
19 count pills and know that. So you had time and time again
20 shortages that were going out. And similarly, that would occur
21 with test scripts, diabetes test strips; whereas the script
22 would be for a quantity count of 100, but they would only
23 dispense 50, but they would bill for the 100. So this now is
24 becoming a common theme with these partial fills.

25 Q. I mean, it happens sometimes, when you go to a pharmacy

1 they don't have all the pills that you need?

2 A. Correct.

3 Q. So they give you what they have, and then they write down
4 that they owe you some?

5 A. Yes.

6 Q. But here, they're doing it every time, and only if you
7 complain, then do they give you.

8 A. Correct.

9 Q. Interesting.

10 In this interview, Ms. Ridolfi told you that she learned
11 that Mr. Annappareddy kept some of these drugs at his house; is
12 that right?

13 A. Yes.

14 Q. How did she learn that?

15 A. Just in talking with other employees there, she had
16 learned that it was not uncommon for them to transport drugs to
17 his residence in Harford County.

18 Q. Is that troubling to you, as an investigator?

19 A. Yes.

20 Q. How so?

21 A. Because then the drugs become -- I guess, the integrity is
22 questioned in that if they leave a pharmacy prescription shelf
23 and they're not going to directly into the hands of the
24 patient.

25 Q. Did Ms. Ridolfi -- or did you ask her, again, for

1 patients -- or names of patients for you to go and verify
2 whether they had received --

3 A. Yes.

4 Q. -- been billed for drugs that weren't --

5 A. Yes.

6 Q. -- ordered or reversed?

7 And did she provide you some additional names?

8 A. She did.

9 Q. What did she -- what names did she give you?

10 A. She gave me the name of Gregory Fowler as a Medicaid
11 recipient. And the other ones are marked out here. I don't
12 know the names.

13 Q. I want to ask you about this patient, Fowler. Can you
14 read the highlighted section that we have on Page 7 of this
15 report.

16 A. Yes.

17 "After listening to this interaction between Miller and
18 Amy, Ridolfi advised Amy to take back the drugs, complete
19 reversals as necessary, and then also complete reversals for
20 the medications that were not delivered from the 10/30/2012
21 refills. On Tuesday, November 27, 2012, Ridolfi printed an
22 internal patient IRS statement for the period of 1/1/12 to
23 11/27/12. This document is provided as attachment 3. Ridolfi
24 presented this internal document to me, noting the activity
25 dated 10/30/12 and 11/26/12 for Fowler's refill billings. She

1 is aware that no prescriptions were delivered to Fowler on
2 10/30/12 nor on 11/26/12, as she located the bags days later in
3 the undeliverable bins from both of those dates."

4 Q. So at this point, she's telling you they're doing it in
5 the case of a -- the pharmacy techs are billing, even when she
6 said "They don't want it, don't do it"?

7 A. Yes.

8 Q. Did Ms. Ridolfi also provide you with billing information
9 from Pharmacare's computer?

10 A. Yes.

11 Q. Did all of that information that she's providing you to
12 confirm and validate what she was saying?

13 A. It did.

14 Q. Ms. Ridolfi appears to be very invested in your
15 investigation. Can you tell us why?

16 A. Well, her observations --

17 MR. GREENBERG: Objection, Your Honor. The witness
18 can't speak to Ms. Ridolfi's state of mind.

19 THE COURT: How would she know that?

20 BY MR. EISER:

21 Q. Can you tell me if you spoke to Ms. Ridolfi about why she
22 was cooperating?

23 A. I did.

24 Q. What did she say?

25 A. Because the behavior and the processes and --

1 **MR. GREENBERG:** Objection. Your Honor, this is
2 hearsay. Multiple levels, at this point.

3 **THE COURT:** I'm a little bit concerned about that,
4 Mr. Eiser.

5 **MR. EISER:** Pardon me, Your Honor?

6 **THE COURT:** I'm just concerned about her
7 subjectively --

8 **MR. EISER:** I'm rephrasing that question. I'm not
9 asking her to read the mind.

10 **THE COURT:** State the question again. State the
11 question again.

12 **BY MR. EISER:**

13 **Q.** What did Ms. Ridolfi tell you about why she was
14 cooperating with you?

15 **MR. GREENBERG:** Objection, Your Honor. Hearsay.
16 She's relying on the report, which is then relying on
17 Ridolfi -- hearsay, out-of-court statements.

18 **THE COURT:** I just respectfully disagree. Overruled.

19 **BY MR. EISER:**

20 **Q.** Go ahead.

21 **A.** Her observations were so egregious, what she was seeing
22 were so egregious that she wanted to cooperate in support of
23 Mr. Tokofsky because they were witnessing repeated activity
24 over and over again.

25 **Q.** Did the fact that her name was on these prescription

1 orders have an effect on her?

2 A. It did. She is the pharmacist that is in charge. Her
3 name is on every prescription. And what was happening was they
4 were refilling them under the guise of her name, and she had no
5 knowledge of them.

6 Q. Okay. Was she concerned about her own criminal exposure?

7 A. Yes.

8 Q. And you had a final interview with Ms. Ridolfi on
9 January 11th, 2013, and that interview is documented at Defense
10 Exhibit 21; is that right?

11 A. Yes. That was the interview 1/11/13.

12 Q. At this interview, Ms. Ridolfi described this New Year's
13 Eve billing activity.

14 A. Yes.

15 Q. Can you tell us, what did she tell you at that time?

16 A. She told me that on New Year's Eve of that year, she had
17 left the pharmacy at approximately 5:30. And when she came
18 back in after the holiday, she saw that there had been many,
19 many, many prescriptions that had the labels printed as --
20 which would be indicative of them having been auto refilled.
21 She later learned that that happened late that evening, and
22 that they were -- other employees were there after -- up until
23 after 11:00 p.m., hitting auto refill so that they could make
24 it in time for the month's end.

25 Q. Can you read the highlighted section on Page 5 regarding

1 this matter.

2 A. "Ridolfi has observed this end-of-month activity for the
3 past year, but really only started to pay attention to it in
4 the fall of 2012. Previously, she had not connected the
5 pattern of activity as always occurring on the last date of a
6 given month to refill billing efforts. She first alerted me to
7 this in September of 2012 and has recognized the pattern of
8 this activity ever since. She recalled many times when Jigar,
9 Vipin and Konda would stay late."

10 Q. Can you skip down to the next paragraph.

11 A. Yes.

12 "Ridolfi has heard Vipin and Jigar state on many
13 occasions, 'Ms. Lisa, you can leave now, Reddy's here now, or
14 Wayne's here now.' These statements meant to Ridolfi that
15 another licensed pharmacist was on-site at the pharmacy, which
16 would then allow her to leave. She explained that a pharmacist
17 must be on-site when employees are on the premises. She
18 further described these remarks, 'As it felt as if they were
19 shooing me out the door on the days they were going to go stay
20 or come back.' Previously, she did not make the connection
21 from these remarks or rebilling activity. Since the fall of
22 2012, she began to connect their activity to the uptick in
23 prescriptions to be filled on or about the 1st of each month.

24 "Regarding the billing activity that occurred on 12/31/12,
25 Ridolfi was surprised in learning that the employees conducting

1 the billing for the refills were on-site until 11:40 p.m. on
2 New Year's Eve. But this did not shock her. During her
3 conversation with Harsha on the morning of 1/2/13, the remark
4 was conveyed from him to her, quote, 'You know how Reddy is
5 when it comes to his money. He wants everything billed, and we
6 had to stay and do it on New Year's Eve.' Ridolfi then asked
7 Harsha, who was in the pharmacy. Harsha replied, it was he,
8 Sri, and Konda. She advised there are three individuals who
9 possessed keys to the pharmacy; Konda, Ram, and her. Ram
10 possesses keys to all of the Pharmacare properties, which he
11 keeps on a single key ring. Further, Ridolfi pointed out that
12 on the first of each month all of the prescriptions in the bins
13 to be filled were for refills from billings generated from
14 existing prescriptions and that no prescription to be filled
15 had originated from an original e-script, e-fax or hard copy
16 presented by a patient from a doctor.

17 "I questioned Ridolfi as to what methodology is used by
18 the Middle Eastern pharmacists and technicians when these
19 refill billings are conducted. She explained that usually, at
20 the end of the month, or on any given day of the month, a roll
21 up report can be generated from the software RX30. The newest
22 software currently in use at the time is Prime RX. They're
23 currently transitions from RX30 to Prime RX. Both systems can
24 generate similar reports. These reports show, by date, each
25 prescription that is eligible for a refill. It also shows how

1 many refills are remaining on the original prescription.

2 "Based on Ridolfi's observations of Vipin and Jigar's past
3 activities, she indicated that they run these described reports
4 and set them in front of them while they're on the computer
5 that's used to generate billings for refills."

6 Q. How did this impact your overall assessment of the
7 investigation?

8 A. That just further corroborated that the first available
9 day that a prescription could be auto refilled, it was, in
10 fact, refilled.

11 Q. And billed?

12 A. And billed, yes. I'm sorry, billed.

13 Q. In this report, Ms. Ridolfi did tell you that she received
14 a performance warning on December 17th, 2012, from Wayne Dyke
15 and Mr. Annappareddy; is that right?

16 A. Yes.

17 Q. What did she tell you about that?

18 A. Well, in short, she just said that she received a
19 disciplinary discussion, if you will, about things that weren't
20 being done, and, coincidentally, they were all the things that
21 she has been providing to me with corroborating evidence that
22 were occurring. But now, it's turned around where it's back on
23 her, that she's been negligent in A, B, C and D, and
24 such-and-such, when everything that was there was things that
25 she had previously presented to me for further investigation.

1 That, each and every time, turned out to be credible.

2 Q. Did the performance warning impact your assessment of
3 Ms. Ridolfi's reliability?

4 A. No. Because I found her to be truthful and credible.

5 Q. And why is that?

6 A. Because every bit of information from the first interview,
7 second, third, fourth, fifth, everything that she provided to
8 me was looked at with a closer eye and determined to be true
9 and credible.

10 Q. Along those lines, did Ms. Ridolfi provide you, at this
11 meeting, the names of some patients that you could check out
12 further?

13 A. Yes.

14 Q. And that would be -- did you interview Craig and Melinda
15 Blomquist?

16 A. I did.

17 Q. Who were they?

18 A. They were parents of a juvenile daughter that lived
19 locally in Harford County, in Bel Air. They had great cause
20 for concern when they went to get a -- prevacation, if you
21 will. They were getting ready to leave on vacation, they
22 wanted to ensure that that they had their child's medication,
23 asthma inhaler, and such. And this is a pretty pricey
24 medication. So they tried to do it over the phone, and it
25 wasn't accepting a refill over the phone. So Mr. Blomquist

1 went to the pharmacy and explained, "I've only had it filled
2 one time. I need the refill for my daughter. We're going out
3 of town." And they would not acknowledge it. Finally, after
4 it became somewhat escalated, he was given the courtesy of,
5 "We'll extend this courtesy to you this time, but next time
6 you're going to need a doctor's authorization." And this was
7 disturbing to Mr. Blomquist because he and his wife kept very
8 meticulous records and documentation, not just for the reason
9 of their daughter's well-being, but for income tax purposes and
10 such; so much so, that they were able to provide to me the date
11 it was the filled, the prescription box that it came in and
12 indicating that there were, in fact, refills left on their
13 daughter's prescription.

14 Q. And you went back and checked the paid claims information?

15 A. I did. I did.

16 Q. I'm looking at Page 9 of this report of your interview
17 with the Blomquists. And what does it say about the total
18 amount identified as fraudulently billed?

19 A. The total amount identified to date for fraudulently
20 billed prescriptions to Express Scripts by Pharmacare on behalf
21 of the Juvenile Blomquist is \$7,692.85.

22 Q. Express Scripts is not the Government, right?

23 A. Correct. They're private insurer.

24 Q. I'm sorry. My colleague tells me I didn't identify that
25 last exhibit number.

1 Your report of the interview with the Blomquists is
2 Defense Exhibit 13. Do you see that?

3 A. Yes.

4 Q. This issue of billing, not delivering, and not reversing
5 the charge then, from this we can -- did you learn something
6 about whether it was just Medicare and Medicaid that was being
7 submitted to this --

8 A. No, what I learned that beyond Medicare and Medicaid on
9 fraudulent billings, that it had expanded out to the private
10 carriers. In one case this was Express Scripts. I believe
11 there was another with Express Scripts. There was one that was
12 CareFirst. And there may have been one or two more. So it
13 wasn't just limited to government entities paying for it. It
14 was private carriers as well.

15 Q. Did Ms. Ridolfi also give you the name of another patient
16 by the name of Deborah Stottelmeyer?

17 A. Yes. Deborah Stottelmeyer, yes.

18 Q. And you've documented that interview in Defense
19 Exhibit 15, dated December 10th, 2012; is that right?

20 A. Yes.

21 Q. What did Ms. Stottelmeyer tell you?

22 A. Similar scenario. That she had a prescription and that
23 she would get them filled at Pharmacare. There was one
24 prescription that she had to personally take there, and that
25 was for a narcotic, Oxycontin, because at that time, the e-fax

1 was not acceptable practice, so she would have to physically
2 take that in there. But beyond that, there were other
3 prescriptions that she had wanted to get filled that she found
4 repeatedly that she was short, oftentimes.

5 Q. I think you documented that on Page 3. Can I ask you to
6 read the highlighted section.

7 A. Yes.

8 "She recalled several occasions when she had called for
9 her medications, and they never seemed to be able to locate
10 them. She would have to make repeated calls to get those
11 recurring situations rectified. Also, she described them as
12 filling prescriptions for her that she never requested,
13 medications that were either changed or ceased by her doctor.
14 She said these problems had gotten so repetitive that she
15 finally told the delivery drivers for Pharmacare to just take
16 them back, and she refused to accept the deliveries."

17 Q. And is this something that sort of echoes with the rest of
18 what you're hearing from the other patients?

19 A. It does. The only difference, it's a third-party private
20 carrier, Express Scripts, that was then changed to Catalyst.

21 Q. And did you go back and check the paid claims information
22 for Ms. Stottelmeyer?

23 A. I did.

24 Q. And what did you learn?

25 A. I found that there had been billings for prescriptions

1 that she never received, that she never requested. I have
2 found that she was -- the pattern -- the FreeStyle test strips
3 were always shorted to 50, even though she complained several
4 times. They said that she was told that there would be an
5 arrangement with the vendor, and that "We can only give you
6 50," but yet, they would be billed for 100 quantity, and this
7 was happening repeatedly. She also said that she had received
8 a medication that was printed on it "Not for retail sale."
9 These would have been from pharmacy representatives that would
10 have provided them as samples.

11 Q. Did Ms. Ridolfi also provide the name of another customer
12 by the name of Tommy Pagotto?

13 A. Tommy Pagotto, yes.

14 Q. Did you interview Tommy Pagotto?

15 A. I did.

16 Q. We're saying "Tommy." Is that a woman?

17 A. Yes.

18 Q. I'm showing you what's been marked as Defense Exhibit 16,
19 your report dated December 13th, 2012. Does that document your
20 interview with Ms. Pagotto?

21 A. Yes.

22 Q. Can you read just the highlighted section there on Page 1.

23 A. "Based on information received during an interview with
24 Pharmacare pharmacist Lisa Ridolfi, I contacted this
25 interviewee and arranged an interview. The information

1 provided by Ridolfi in an interview conducted on Friday,
2 October 5th, 2012, included alleged fraudulent activity at
3 Pharmacare on behalf of this customer."

4 Q. What did she tell you?

5 A. That she had gone into the pharmacy and that there had
6 been auto refills done. There had been refills done on
7 medications that she no longer was taking, but yet, their
8 prescriptions carrier had paid for them, and she never received
9 them.

10 Q. Let me turn to Page 4, ask you to read the highlighted
11 section about what Ms. Pagotto told you.

12 A. "She first became suspicious of Pharmacare billings to her
13 Express Scripts account because she was repeatedly told she had
14 prescriptions to pick up, and these prescriptions were for
15 medications that she no longer took. She explained that back
16 in early 2012, she approximated this time to be February 2012,
17 she went to Pharmacare to pick up a prescription and was
18 advised by the male technician, who she knows as Jigar, that
19 she had several prescriptions to be picked up. When she
20 inquired as to what they were, she was advised that it was
21 Plavix and Lyrica.

22 "She described this individual as one of the regular
23 technicians who works at Pharmacare and further described him
24 as looking Indian from India. She advised this technician that
25 she did not need these drugs because she utilizes the 90-day

1 mail order option through Express Scripts for refills, and as
2 it relates to those particular drugs, she no longer takes
3 Lyrica and Plavix. She did not accept the drugs.

4 "Then, in the latter part of 2012, her husband received a
5 call from an individual at Pharmacare that described as being a
6 foreigner. The individual advised that he had prescriptions to
7 be picked up, and they were also prescriptions for her. He
8 stopped by the Pharmacare pharmacy shortly thereafter, and
9 picked up a bag of prescription medications and took them home
10 and gave the bag to his wife. After she looked at the
11 contents, she saw that these particular drugs were medications
12 that neither she nor her husband needed again, citing their
13 delivery via Express Scripts were drugs that she no longer
14 took. She advised her husband to return to the Pharmacare
15 pharmacy and return the drugs and request reimbursement of the
16 co-pays that he paid. She indicated the total co-pay amount
17 for the three prescriptions was \$95."

18 Q. And just to complete this, I'll skip ahead to Page 6 and
19 ask you to read that note.

20 A. "Of particular note are the below drugs listed in Table 1
21 of Page 7. She cited these specific drugs as having taken them
22 only one time and never having cause to get them refilled. The
23 prescriptions listed are presented by the fill date,
24 prescription numbers, drug, quantity dispensed, days supply,
25 and the amount paid by Express Scripts to Pharmacare. Based on

1 information from the initial 30-day fill was done by her, and
2 then the subsequent refills for each prescription was handled
3 by Express Scripts' mail delivery program. The highlighted
4 boxes in red show the amounts used when totaling the amount of
5 paid claims by Express Scripts to Pharmacare for prescriptions
6 that she did not receive. The charges, amounts paid, for the
7 initial prescription fills were not used in this calculation,
8 only subsequent refill billings were used. The total amount
9 for these fraudulent billings is \$1,961.64."

10 Q. And, again, how did you get this data about the bill --
11 the billing and the --

12 A. This would have been done by way of subpoena because it
13 was a private entity.

14 Q. In addition to your paid claims analysis and your
15 interviews with Pharmacare employees and customers, did you
16 also do undercover or coordinate undercover activity?

17 A. Yes.

18 Q. And what was that?

19 A. That was to utilize two employees of the Medicaid Fraud
20 Control Unit to present, under fictitious names, prescriptions
21 at three different locations.

22 Q. Okay. And is the undercover activity described in Defense
23 Exhibit -- I'm sorry -- this is Plaintiff's Exhibit 26?

24 A. Yes.

25 Q. Can you read the highlighted section there.

1 A. I don't think it's 26, though. It's not 26. But anyway,
2 yes.

3 Q. Hold on one second. Let me --

4 MR. EISER: Your Honor, this is a good time to give
5 your staff a break, if you want.

6 THE COURT: Let me say, with regard to the highlighted
7 exhibits, my law clerk and I have plenty of time after-hours
8 each day to review what we've seen. So it would be helpful if
9 we could get those sooner rather than later; is that possible?

10 MR. EISER: You'll get them tonight.

11 THE COURT: Can the Plaintiffs get them as well?

12 MR. GREENBERG: Yes, Your Honor.

13 THE COURT: All right. That would be good if we could
14 get them tomorrow.

15 All right. Let's take a 10-minute recess.

16 THE CLERK: All rise. This Honorable Court is now in
17 recess.

18 (Whereupon, a recess was taken from 3:36 p.m. to
19 3:49 p.m.)

20 THE CLERK: All rise. This Honorable Court is now in
21 session.

22 THE COURT: Please be seated.

23 Please continue, Mr. Eiser.

24 BY MR. EISER:

25 Q. Ms. Gutberlet, we left off with Plaintiff's 26, that is

1 the documentation of your undercover activities; is that right?

2 A. Yes, it is.

3 Q. And can you tell the Court what was the reason for doing
4 the undercover activity?

5 A. Well, at that point, we had had many, many verified
6 occasions where prescriptions had been auto refilled and not
7 delivered to the patients. And so in that thought, in
8 furtherance of the investigation, we wanted to essentially do
9 it ourselves to see if that had happened. So two of my former
10 colleagues had assumed fictitious names and then Medicaid cards
11 and prescriptions and sought to have them filled and then
12 subsequently refilled -- or rebilled, I should say.

13 Q. And what happened?

14 A. At the Plumtree location, they were refilled. I believe
15 it was Seroquel. The original scripts were written with
16 original, plus five refills. And after 30 days, we did an
17 analysis just to see initially, and what we found was that it
18 was refilled.

19 Q. Did you further check to see if the prescriptions were
20 delivered and --

21 A. They were not delivered.

22 Q. And were the charges reversed?

23 A. They were not reversed. Paid claims were not reversed.

24 Q. Is there anything else significant about your undercover
25 activity?

1 A. After the fictitious employee that went up to Plumtree,
2 she had prescriptions for Seroquel and Cogentin. And
3 subsequent to this, a month later, just about, Lisa Ridolfi,
4 pharmacist, had located the prescriptions in a bin on the floor
5 of the Pharmacare pharmacy. It indicated in their system that
6 they were undeliverable, and Ridolfi provided pictures of those
7 specific prescriptions in the pharmacy bin where it had been
8 rebilled.

9 Q. Okay. I'm going to show you what we've marked as
10 exhibit -- Defense Exhibit 22, which is your email to
11 Mike DiPietro asking about how often these were refilled. What
12 did Mr. DiPietro tell you?

13 A. He responds that he, "... revised undercover activity and
14 that Pharmacare has refilled some of the scripts that our
15 undercovers brought in. I left the number of times that this
16 has happened blank. Can you tell me if Pharmacare has refilled
17 all four scripts that our two undercovers submitted? I recall
18 that refills are available for all four scripts by mail."

19 Q. Did that surprise you at all?

20 A. No.

21 Q. Did it further corroborate what you'd been investigating?

22 A. Yes, sir.

23 Q. After the -- this billing process was confirmed by the
24 witness interviews, the undercover activity, your paid claims
25 information, at some point the U.S. Attorney's Office took over

1 the investigation; is that right?

2 A. Working in concert with them, using my investigation as
3 the basis to take the investigation further.

4 Q. And when did the U.S. Attorney's Office get involved?

5 A. Oh, geez. I cannot quote a date. I'd have to look at
6 documentation. I'm sorry.

7 Q. Was that in January 2013?

8 A. Yes, that sounds about right. Because we would have
9 went -- walked to a meeting at their offices.

10 Q. And what happened at the meeting?

11 A. That's where the folks we spoke of earlier, both at the
12 state level and the federal level, were present, with
13 Ms. Tokofsky as well.

14 Q. And what was discussed?

15 A. The information that Mr. Tokofsky provided and then our
16 subsequent investigation to get us where we started to where we
17 were at that point.

18 Q. Okay. And then you resigned from Maryland Medicaid Fraud
19 Control Unit in April --

20 A. I did.

21 Q. -- of 2013; is that right?

22 A. Yes.

23 Q. Before you left, did you have meetings and/or discussions
24 with Agent Maura Lating?

25 A. Yes.

1 Q. And why is that?

2 A. Well, we had meetings with Mosley, Lating, internally and
3 externally stakeholders in the investigation. It was paramount
4 that we did share information.

5 Q. Okay. Can you describe your working relationship with
6 Agent Lating?

7 A. Professional, cordial, pleasant.

8 Q. And is that also true for Agent Mosley?

9 A. Yes.

10 Q. Before you left, did you provide them -- all of the
11 investigators, all of your information?

12 A. Yes.

13 Q. And your reports?

14 A. Yes.

15 Q. When you left the Medicaid Fraud Control Unit in April of
16 2013, did you believe there was probable cause that
17 Mr. Annappareddy was committing healthcare fraud?

18 MR. GREENBERG: Objection, Your Honor. This is a
19 legal question. And, I mean, the witness is not someone who
20 made those calls here.

21 THE COURT: I do think that goes to the ultimate issue
22 that it's not really that helpful to me. So I'll sustain the
23 objection.

24 MR. EISER: Thank you, Your Honor.

25

1 BY MR. EISER:

2 Q. You explained earlier that you didn't draft the affidavit;
3 is that right?

4 A. Correct.

5 Q. The search warrant affidavit that brings us together?

6 A. Correct.

7 Q. That would be Plaintiff's Exhibit 70. Can you pull that
8 up, please.

9 A. I'm sorry. Yes, I have it.

10 Q. Have you read and familiarized yourself with what's been
11 called in this case "the Lating affidavit"?

12 A. Yes, sir.

13 Q. And in particular, have you read the section titled "The
14 Scheme to Defraud," in Paragraphs 10 through 13, beginning on
15 Page 6?

16 A. Yes.

17 Q. Does that section accurately describe the healthcare fraud
18 that you were investigating since 2012?

19 A. Yes.

20 Q. Does it mistake any important facts?

21 A. The only one that I could see was a misspell on Mt. Clare
22 that was somewhere in here should be C-L-A-R-E and not A-I-R-E.
23 Other than, everything is as it should be.

24 Q. Does that section omit any important fact?

25 A. No, not that I can think of.

1 Q. Let me back up and ask you: In all of your Maryland
2 Medicaid Fraud Control Unit reports, did you misstate any
3 important facts?

4 A. No, sir.

5 Q. And did you omit any important facts?

6 A. No, sir.

7 Q. Okay. Have you read the summaries of your interviews with
8 confidential sources, former employees, Pharmacare customers,
9 and other pharmacists in Paragraphs 18 through 42 of the Lating
10 affidavit?

11 A. Yes.

12 Q. Does the affidavit accurately describe the facts of your
13 interviews with your confidential sources, former employees,
14 Pharmacare customers, and other pharmacists?

15 A. Yes, it does. It accurately depicts that.

16 Q. Does it misstate any important facts?

17 A. No, sir, it does not.

18 Q. Does it omit any important facts?

19 A. No, sir.

20 Q. Have you read the summary of your undercover operation in
21 Paragraphs 43 and 44 of the affidavit?

22 A. Yes.

23 Q. And does that affidavit accurately state the facts of the
24 undercover operation?

25 A. Yes, sir.

1 Q. I only have a couple more.

2 Mr. Greenberg was asking about the undercover operation
3 and said, apparently it was significant, that the store where
4 the prescriptions were automatically billed without request and
5 not reversed, was the Plumtree store.

6 A. Yes.

7 Q. Wasn't the Plumtree store the center of the fraud?

8 A. Yes.

9 Q. So isn't that where you would expect to find --

10 A. Yes.

11 Q. I think we talked about this before. I want to ask you --
12 I want to list several things here, and ask you if it impacted
13 your assessment of Mr. Tokofsky and his reliability. His
14 70 percent ballpark estimate in his *qui tam* and his other --
15 his lower estimate in his interview with you, did that impact
16 your assessment of his reliability?

17 A. No. What impacted my assessment was the information that
18 he provided that I could substantiate and deem credible, which
19 I did.

20 Q. All right. The fact that Mr. Tokofsky told you he
21 resigned and later got unemployment, does that have any impact
22 on your assessment of his reliability?

23 A. No. I wasn't aware that he was getting or did receive
24 unemployment. That was not discussed.

25 Q. If that was true, would that affect your --

1 A. It would not have.

2 Q. Mr. Greenberg asked you if you ever heard of a witness
3 giving a media interview about a subject of an investigation.
4 I think your answer was, in your own investigations, right?
5 But you've -- have you ever heard of Elizabeth Holmes?

6 MR. GREENBERG: Objection, Your Honor. Relevance.

7 THE COURT: Well, the door was basically opened on
8 that. I'll let it in for what it's worth.

9 Overruled.

10 BY MR. EISER:

11 Q. Did you ever see any interviews with her?

12 A. Oh, in the news media, yes.

13 Q. Did you see her face on the cover of a magazine?

14 A. As recently as yesterday, when she reported.

15 Q. Same with Bernie Madoff, you ever seen interviews with
16 him?

17 A. Yes.

18 MR. GREENBERG: Same objection, Your Honor, relevance.

19 THE COURT: Overruled.

20 BY MR. EISER:

21 Q. Have you seen those media interviews?

22 A. Yes.

23 MR. EISER: Your Honor, one second while I check with
24 my co-counsel.

25 BY MR. EISER:

1 Q. I asked you if you had interviewed other pharmacists, but
2 I didn't give you the report. This is Defense Exhibit 29, your
3 report dated April 9, 2013, your interviewed with Robert [sic]
4 Hiller. Did you interview Robert [sic] Hiller?

5 A. It's Richard Hiller. Yes.

6 Q. I'm sorry, Richard Hiller.

7 And why did you interview him?

8 A. A complaint had come in, and it was just in line with
9 other complaints in their context, so to speak. And so I went
10 to his pharmacy in Baltimore County, northeast area, and did an
11 interview with him at his location there. And he expressed to
12 me occasions where he had tried to do refills for his
13 patients/clients and was unable to do so because they had
14 already been billed by Pharmacare. He then took the action, as
15 a pharmacist would do, to contact that pharmacy to say, "Hey,
16 can you do this reversal so I can complete the transaction."
17 And he was stonewalled there, and it didn't happen initially.
18 And that bothered him. And then there were other occasions
19 with another client that similarly couldn't get refills.

20 Q. And how did that information affect you in your
21 investigation?

22 A. Again, it just further corroborated what we already knew
23 was a pattern of activity.

24 MR. EISER: That's all I have, Your Honor. Thank you.

25 THE COURT: Any additional questions from the

1 Plaintiff?

2 **MR. GREENBERG:** Yes, we will, Your Honor. But may we
3 take a brief break to confer before we get into that?

4 **THE COURT:** How long do you need? I mean, do you want
5 to do it here, or would you like to leave the courtroom?

6 **MR. GREENBERG:** We would like to leave the courtroom.
7 Maybe 10-minutes.

8 **THE COURT:** All right. We'll go ahead and take a
9 10-minute recess.

10 **MR. GREENBERG:** Thank you, Your Honor.

11 **THE CLERK:** All rise. This Honorable Court is now in
12 recess.

13 (Whereupon, a recess was taken from 4:03 p.m. to 4:13
14 p.m.)

15 **THE COURT:** All right. Can we proceed.

16 **MR. GREENBERG:** Your Honor, I'd like to say thank you
17 for letting us take that brief recess.

18 **THE COURT:** All right. You may proceed.

19 - - -

20 **REDIRECT EXAMINATION**

21 - - -

22 **BY MR. GREENBERG:**

23 **Q.** Ms. Gutberlet, I just want to ask you about some, but not
24 all of the areas that Mr. Eiser or the government counsel asked
25 you about. Let's start with the stuff about H1B visas and

1 immigration. He asked you a lot of questions about that,
2 right?

3 A. Several, yes.

4 Q. Were you aware that Pharmacare had over 100 employees in
5 2013?

6 A. I did not know how many they had.

7 Q. Did you that about 80 percent were not on H1B visas?

8 A. I did not know that.

9 Q. Did you know that under the applicable regulations for H1B
10 visa, if an employee on an H1B visa was fired they had three
11 months to find a new job?

12 A. Correct.

13 Q. You knew that?

14 A. Yes.

15 Q. There's no way Mr. Annappareddy could send them right back
16 to India, right?

17 A. Don't know.

18 Q. They had three months to find a new job, correct?

19 A. They had to find a sponsor.

20 Q. But they had three months?

21 A. I don't know what duration of time it was.

22 Q. You were not informed, you didn't know what the
23 regulations were on immigration?

24 A. Correct.

25 Q. And also you never reported these allegations that were

1 made about various immigrations issue to ICE, Immigration and
2 Customs Enforcement, did you?

3 A. I did.

4 Q. Is there a memo on that?

5 A. I don't really recall, but I can tell you about the
6 meeting if you would like.

7 Q. Well, let's move on because we've already talked about how
8 if it happens in writing so we'll find it. You never reported
9 any of this to NSCIS, did you?

10 A. I'm sorry, report --

11 Q. United States Custom and Immigration Services, you never
12 reported any of this stuff to them, did you?

13 A. We had a meeting with them to see if they wanted --

14 Q. Who's the we?

15 A. Myself and Pam Arnold and perhaps Cathy Pascale.

16 Q. And Maura Lating?

17 A. No, I don't believe -- no, Maura was definitely not there
18 because they didn't want to take the case if the FBI was going
19 to have their hands in it. There was not going to be any
20 agency cooperation so to speak, and we weren't going to do
21 that.

22 Q. But you knew that after Maura Lating joined the
23 investigation team in early January of 2013, she communicated
24 with ICE about immigration issues, right?

25 MR. EISER: Objection.

1 **THE WITNESS:** I don't know what she communicated.

2 **BY MR. GREENBERG:**

3 **Q.** So your testimony is you and some other folks had a
4 meeting with immigration, but you don't know what Maura Lating
5 did about that?

6 **A.** Maura Lating was not involved at that point.

7 **Q.** Right. My question, Ms. Gutberlet, is after Maura Lating
8 got involved early January 2013, you were still there until
9 early April 2013, you know that Maura Lating communicated with
10 immigration officials about immigration issues with Pharmacare,
11 right?

12 **A.** I do not know for certain that she did that.

13 **Q.** She never told you that?

14 **A.** I don't recall.

15 **Q.** You never reported any of these immigration issues to the
16 Maryland Board of Pharmacy, did you?

17 **A.** I did not.

18 **Q.** Did you know that approximately 80 percent of Pharmacare's
19 employees are either born in the United States or naturalized
20 citizens?

21 **A.** Don't know where they were born. No, sir.

22 **Q.** You interviewed, what, five former -- current former
23 employees?

24 **A.** More than.

25 **Q.** Huh?

1 A. More than, probably.

2 Q. Well, let's go through. We've got Lisa Ridolfi, one?

3 A. Yes.

4 Q. Dennis Tokofsky is two, right?

5 A. Yes.

6 Q. And Caitlin Biemer is three. Nikkia Dansbury is four.

7 Sue Cramer is five.

8 A. Six.

9 Q. Who am I missing? Oh, Candice Covahey, is she the one

10 that I'm missing?

11 A. I'd have to check the report.

12 Q. You're saying you interviewed six?

13 A. I believe so.

14 Q. Okay. That's six out of over 100? Yes?

15 A. Well, I don't --I don't know.

16 Q. You didn't look and see how many employees Pharmacare had?

17 A. I did not.

18 Q. Of those six, five were former employees, right?

19 A. Yes.

20 Q. And the only current employee was Ms. Ridolfi?

21 A. Yes.

22 Q. Who we've already established you didn't know she got

23 performance warnings as early as February 2012, right?

24 A. Correct.

25 Q. You didn't know she got another performance warning in

1 writing days before she first contacted you, right?

2 A. I did not know that.

3 Q. Right. So those five former employees, did you know that
4 at least four of them got performance warnings before they left
5 Pharmacare?

6 A. I do not know of any performance warnings.

7 Q. Right. None of them told you that part, right?

8 A. Correct.

9 Q. Do you know what percentage of Pharmacare's employees,
10 when you're working on the Pharmacare matter -- let me rephrase
11 this.

12 You didn't know, you had no idea, what percentage of
13 Pharmacare's employees when you worked in the Pharmacare matter
14 were of Indian origin, did you?

15 A. I did not know.

16 Q. That's not something you looked into?

17 A. No, I did. On some report I recall I contacted the
18 Annapolis Data Center, which is where we get our data from, to
19 find out the names of all of the employees. And they were put
20 on an Excel spreadsheet. At the time I had a listing,
21 alphabetical listing, and it would be reasonable to look to see
22 who were not of Caucasian descent.

23 Q. But you don't know percentage --

24 A. No, I did not know percentages, no.

25 Q. You didn't even know that Pharmacare had more than 100

1 employees in 2013?

2 A. I don't recall how many they had.

3 Q. Because you didn't look into that?

4 A. I did look into that, but I don't recall a count.

5 Q. But you don't know that the Annapolis database was
6 up-to-date and had the current number of employees, do you?

7 A. That's a state of Maryland issue, not mine, I don't know.

8 Q. You don't know.

9 You never asked Ms. Ridolfi how many employees there were,
10 did you?

11 A. No.

12 Q. You never asked Mr. Tokofsky, did you?

13 A. No.

14 Q. Never asked Caitlin Biemer, did you?

15 A. No.

16 Q. Never asked Ms. Sue Cramer, did you?

17 A. Wasn't --

18 Q. Never asked Ms. Covahay, did you?

19 A. Nope.

20 Q. And you never asked Nikkia Dansbury either, did you?

21 A. No.

22 Q. You testified in response to one of the Government's
23 counsel, I think you said yes, that the Plumtree store was the
24 center of the fraud. Did I hear you testify to that correctly?

25 A. Yes.

1 Q. You also testified at a different point that
2 Mr. Annappareddy would strategically place the Middle Eastern
3 employees at the store so they could execute the fraud, right?

4 A. Correct.

5 Q. And that would include having a Middle Eastern pharmacist
6 at every pharmacy, right?

7 A. Yes.

8 Q. But Lisa Ridolfi was not of Middle Eastern decent, was
9 she?

10 A. Correct.

11 Q. And she was the pharmacy manager at Plumtree, wasn't she?

12 A. She was the pharmacist but --

13 Q. And the pharmacy manager, correct?

14 A. No, Annappareddy was there.

15 Q. So your testimony is that Lisa Ridolfi's title was not
16 pharmacy manager?

17 A. Pharmacy, pharmacist, pharmacy manager, I don't know if
18 she was the manager or the pharmacist.

19 Q. All right.

20 A. She was responsible for the oversight of the going on
21 there.

22 Q. So a white person was responsible for the oversight of the
23 pharmacy at Plumtree?

24 A. Yes.

25 Q. You testified about the undercover operations. Did you

1 know that the pharmacist at Park Heights was Indian origin?

2 A. I did not know.

3 Q. Did you know at any time that the pharmacist at Mt. Clare
4 was of Indian origin?

5 A. I don't recall.

6 Q. Not something you looked into?

7 A. I looked into it. I just don't recall. Eleven years ago,
8 I don't recall.

9 Q. I want to show you -- please turn to Plaintiff's
10 Exhibit 9, Tab 9. I'll ask you a couple questions and I'll
11 talk about the document. All right.

12 A. Okay.

13 Q. All right. You testified earlier that there have been a
14 couple of reports about two reports before Tokofsky contacted
15 the MFCU involving HIV drugs, right?

16 A. Yes.

17 Q. Atripla, right?

18 A. Yes.

19 Q. And it was determined that both of those were by MFCU and
20 both of those were just mistakes, right?

21 A. It was presumed at that time.

22 Q. Right. And then do you see, though, that despite that
23 happening, that happened in 2010 and 2011, right? Correct?

24 A. I'd have to refer back to the reports, if you can direct
25 me to that.

1 Q. You should have numerous reports on your -- and DMH [sic],
2 I think, had that information?

3 A. Which report is it? I'll give you the date if you want to
4 point me to it.

5 Q. Sure. Let's look at Government Exhibit Number 1. And
6 I'll point you to it five lines down, December 2010 and mid
7 2011.

8 A. Okay. I'm sorry, your question then?

9 Q. My question is that these two reports involving Atripla
10 and Pharmacare that were presumed to be mistakes after MFCU
11 investigated, they were in 2010 and 2011?

12 A. Yes, correct.

13 Q. But that didn't stop you and Pam Arnold from continuing to
14 investigate, did it?

15 A. No.

16 Q. You kept looking, didn't you?

17 A. Yes.

18 Q. And then if you look at Plaintiff's Exhibit 9, you
19 attended a case status meeting in March 27, 2012 for
20 Pharmacare, didn't you?

21 A. I imagine I did, I don't know. I'm sure I did.

22 Q. You testified at your deposition, do we have to go through
23 that?

24 A. If I said it, it happened. I just don't recall right now.

25 Q. So you were there and Pam Arnold was there, right?

1 A. Yes.

2 Q. And the only notes here say, "have nothing," dash, "knows
3 what she has to do," right?

4 A. Yes.

5 Q. And then after that, May 3rd, 2012, that's five or six
6 weeks later, magically Dennis Tokofsky calls MFCU, right?

7 A. Yes.

8 Q. All right. Let's move on to a different topic. There was
9 some questions about steering. You never reported that to the
10 Maryland Board of Pharmacy, did you?

11 A. No.

12 Q. In fact, you never reported it to any law enforcement
13 agency, did you?

14 A. No.

15 Q. You mean correct?

16 A. Correct.

17 Q. The email that Dennis Tokofsky told you about involving
18 reversals, you never actually read the email, right? You just
19 wrote in your memo what Mr. Tokofsky told you about the email,
20 right?

21 A. I wrote my memo as conveyed from Mr. Tokofsky.

22 Q. Right. You didn't actually get a copy of the email,
23 though?

24 A. No.

25 Q. You mean correct?

1 A. Which email are we talking about?
2 Q. So you were asked on your examination by the Government
3 counsel about an email that Dennis Tokofsky sent about
4 reversals to Mr. Annappareddy, right?

5 A. Right. I did not see that.

6 Q. You never saw the email. You relied on what Tokofsky told
7 you about it, right?

8 A. Yes, right.

9 Q. And you didn't know, did you, before sending that email
10 Tokofsky gotten at least one performance warning, right?

11 A. Not aware of any performance evaluations.

12 Q. Because Tokofsky never told you about that?

13 A. He did not.

14 Q. You testified in response to the questions from Government
15 counsel that you, yourself, looked into Caitlin Biemer's
16 statement about the 14-day rule being a federal law issue,
17 right?

18 A. Yes.

19 Q. That was your testimony?

20 A. Yes.

21 Q. And your testimony is that you, yourself, found that it
22 isn't, right?

23 A. Right.

24 Q. But that's not actually what happened, is it?

25 A. I don't understand what you're asking.

1 Q. Well, you testified earlier that Robert Mosley gave you
2 the 14-day rule, right?

3 A. No. I got that from Tokofsky, from Ridolfi, and et
4 cetera, et cetera.

5 Q. Putting aside these former employees who didn't tell you
6 about the performance warnings, the only person that told you
7 about the 14-day rule was Special Agent Mosley, right?

8 A. I don't know. I cannot say that.

9 Q. Okay. Why don't we -- why don't we -- this'll be
10 Plaintiff's 126. I'm sorry, Plaintiff 125. Just to move
11 things along, can we do it electronically and mark it later,
12 Your Honor? Thank you.

13 If we can bring that up on the screen.

14 MR. PHELPS: We need to see a copy, Your Honor. I
15 don't think this is a --

16 MR. GREENBERG: I apologize.

17 THE COURT: This is a new exhibit for impeachment
18 purposes?

19 MR. GREENBERG: Yes, Your Honor.

20 THE COURT: All right.

21 MR. GREENBERG: Would you like a hard copy?

22 THE WITNESS: No.

23 MR. GREENBERG: Would you like a copy?

24 THE CLERK: Yes, please. Thank you.

25 BY MR. GREENBERG:

1 Q. Ms. Gutberlet, were you able to see the email?

2 A. No.

3 MR. GREENBERG: I apologize. I think I just marked
4 the wrong exhibit. Let me take that back. I apologize.

5 Court's indulgence. Sorry. I apologize. My apologies.

6 BY MR. GREENBERG:

7 Q. Ms. Gutberlet, do you see the middle of the page?

8 A. I do, yes.

9 Q. Plaintiff's 125, you sent this email to Robert Mosley
10 September 12, 2012, at 11:06 a.m.?

11 A. Yes.

12 Q. The second paragraph is what I want to ask you about, it
13 says Caitlin, that's Caitlin Biemer, right?

14 A. Yes.

15 Q. "Caitlin was adamant about this 14-day reversal thing,"
16 right?

17 A. Yes.

18 Q. "I was quite surprised when the folks at DHMH told us on
19 Monday they were unaware of any hard and fast policy," end
20 quote, right?

21 A. Right.

22 Q. One of the folks at the DHMH that was involved in this
23 investigation was Susan Steinberg?

24 A. I don't recall that name, I'm sorry.

25 Q. Okay. All right. We'll come back to that.

1 And you said, quote, "Sorry, I am not buying that." And
2 you put in capital caps, "Everyone, I mean, everyone I've
3 spoken to so far, including Caitlin, is adamant this is federal
4 law that mandates that drugs are returned to stock and the
5 charges reversed," I think you meant to say within that 14-day
6 period, end quote, right?

7 A. Yes.

8 Q. All right. And then, rather than you doing the research
9 or looking into it, Agent Mosley did it?

10 A. I guess he did. I don't have a report of that. I can't
11 speak to that.

12 Q. Ms. Gutberlet, to be clear, you testified that you don't
13 recall whether you made any further inquiries or guessing with
14 Special Agent Mosley, you don't recall?

15 A. If I made any further inquiry with Mosley?

16 Q. You said you didn't accept the DHMH's statement that there
17 was no hard and fast policy for the 14-day --

18 A. Correct.

19 Q. You didn't believe it?

20 A. Correct.

21 Q. And then you testified when Government counsel was asking
22 you questions that you looked into it yourself and found it's a
23 requirement, right?

24 A. It's a requirement by the insurance companies.

25 Q. Okay. But that's not something that you actually looked

1 into at the time, is it?

2 A. That's what we learned as a team when we found this
3 information. Is it a law? Is it not a law? What is it?
4 That's how we came to the conclusion.

5 Q. So if that's the case, it would be documented in a memo,
6 right?

7 A. Yes.

8 Q. As you said before, if it's not in a memo it didn't
9 happen, right?

10 A. Correct.

11 Q. Now, in terms of you, rather than looking into this
12 yourself, you say you don't recall whether you did any -- look
13 into it, you relied on Mosley, correct?

14 A. Correct.

15 Q. Let's play the same clip we played before about Mosley.
16 (Video playing.)

17 Q. All right. Does this refresh your recollection?

18 A. Somewhat.

19 Q. Have we established several times your testimony at your
20 deposition under oath are truthful, right?

21 A. Yes.

22 Q. All right. Let's move on to a different topic.
23 You said --

24 THE COURT: Do you want to move this in evidence that
25 you've used?

1 **MR. GREENBERG:** I apologize. I would like to move it
2 into evidence.

3 **THE COURT:** Any objection?

4 **MR. EISER:** Yes, Your Honor. Her testimony has been
5 identical every time. All the Pharmacare employees told her 14
6 days.

7 **THE COURT:** Well, for what it's worth for impeachment
8 purposes I'm going to allow it over the defense objection.

9 Admitted.

10 What's the exhibit number?

11 **MR. GREENBERG:** It'll be 125. I apologize for the mix
12 up on that.

13 **BY MR. GREENBERG:**

14 Q. The next one, you testified a few minutes ago,
15 Ms. Gutberlet, if I heard you correctly, that you don't recall
16 whether Susan Steinberg was involved in the investigation,
17 right?

18 A. I don't recall the name. I can't speak to that.

19 **MR. GREENBERG:** All right. This'll be Plaintiff's
20 126.

21 **BY MR. GREENBERG:**

22 Q. Ms. Gutberlet, do you see the email on the screen?

23 A. Yes.

24 Q. The top email is from Peggy Gayhardt to you, May 17, 2012,
25 9:02 a.m., right?

1 A. Yes.

2 Q. And Nate was sort of a nickname for Eileen Nathan at the
3 MFCU, right?

4 A. Yes.

5 Q. And Eileen Nathan was, I guess, the chief of
6 investigations?

7 A. She was the director of the unit.

8 Q. Director of the unit, okay. And Peggy Gayhardt was the
9 chief of investigations?

10 A. Yes.

11 Q. And do you see four lines from the bottom it says, quote,
12 "Nate also spoke to Susan Steinberg at DHMH and asked her about
13 the pharmacist who worked at program integrity," end quote?

14 A. I see.

15 Q. And it says, "Susan, recognize her name"?

16 A. Yes.

17 Q. Does this refresh your recollection that, in fact, Susan
18 Steinberg at DHMH was involved in the investigation?

19 A. I guess, if it's written. I don't recall. I don't recall
20 the name.

21 Q. Well, it's an email to you from the chief of
22 investigations, right?

23 A. Correct.

24 Q. You have no reason to doubt the accuracy of what
25 Ms. Gayhardt wrote, do you?

1 A. No.

2 Q. So it shows that Susan Steinberg was involved, right?

3 A. Yes.

4 MR. GREENBERG: I would ask this to be in evidence as
5 well, Your Honor.

6 THE COURT: Any objection?

7 MR. EISER: It's not impeachment. She said she didn't
8 remember. This might refresh her memory. Although, I mean, it
9 says somebody contacted Ms. Steinberg. That doesn't mean she's
10 involved in the investigation.

11 THE COURT: I'm going to admit it over the objection.

12 Admitted.

13 MR. GREENBERG: Thank you, Your Honor. That'll be
14 126.

15 BY MR. GREENBERG:

16 Q. Now, you talked about, in addition to the interviews, the
17 five former Pharmacare employees and the one current,
18 Ms. Ridolfi, you interviewed some patients, right?

19 A. Yes.

20 Q. You did not interview a single Med-4 patient after
21 August 2012, did you?

22 A. I don't -- I'm trying to get the dates in line here. I
23 don't --

24 Q. Your memo of August 31st, 2012.

25 A. What about it?

1 Q. You interviewed -- actually it was conveyed you
2 interviewed three patients. You actually interviewed the
3 grandmother of one patient, right?

4 A. Yes.

5 Q. SS initials?

6 A. Yes.

7 Q. Didn't actually interview SS, did you?

8 A. Correct, she was not there.

9 Q. And you didn't mention that the grandmother gave you
10 labels of prescriptions that matched the time frame of the
11 Tokofsky report, right?

12 A. I'd have to review the report. I don't recall.

13 Q. We went over this in your deposition --

14 A. It's a year ago and I don't recall today, as I sit here,
15 11 years ago.

16 Q. But you prepared to testify today, right?

17 A. Excuse me?

18 Q. You prepared to testify today, didn't you?

19 A. Yes.

20 Q. And you reviewed your deposition transcript?

21 A. I don't recall that particular piece of information.

22 Q. You did review your deposition transcript, didn't you?

23 A. Yes.

24 Q. Now, the interviews of the grandmother and two patients
25 that you wrote a memo on August 21st, 2012, those were the last

1 Med-4 patients you interviewed, right?

2 A. I don't recall. I'd have to look at the documentation in
3 its entire --

4 Q. Okay, well --

5 A. -- the whole body of work, I would have to look at that
6 to see when the work concluded.

7 Q. Okay. Well, you agree that the Government showed you
8 interview reports for Craig and Melinda Blomquist, right?

9 A. Yes.

10 Q. And their daughter who is not a Med-4 patient, right?

11 A. Correct.

12 Q. And then there was a patient TP?

13 A. Yes.

14 Q. Not a Med-4 patient, right?

15 A. That is correct.

16 Q. And there was DS, not a Med-4 patient?

17 A. I'm trying to think of the initials, I'm sorry, it escapes
18 me.

19 Q. Deborah?

20 A. Oh, correct.

21 Q. Not a Med-4. And then there were no other interviews they
22 asked you about, right?

23 A. Correct.

24 Q. And the Blomquists, TP, and DS, do you agree none of them
25 were, in the case of Blomquist their daughter, none of them

1 were Med-4, right?

2 A. Correct.

3 Q. And the other thing they have in common is they're all
4 white, right?

5 A. Yes.

6 Q. You testified that you could corroborate -- you testified
7 today that you could corroborate reports by Lisa Ridolfi and
8 other folks by looking at paid claims data, right?

9 A. Paid claims data and interviews and such.

10 Q. Okay. The claims at that time only show what was billed
11 and reversed, right?

12 A. They show what was paid to the provider.

13 Q. They don't show whether a patient received the medication,
14 do they?

15 A. No.

16 Q. You mean correct?

17 A. Correct.

18 Q. Now, the reality is to know whether a patient received
19 their medication you would either have to check the logs that
20 documented received or interview the patient, right?

21 A. Yes.

22 Q. You agree with that?

23 A. Yes.

24 Q. In fact, you also agree that unless you interview the
25 patient, you can't know whether they received the prescription,

1 can you?

2 A. There should be logs --

3 Q. Okay.

4 A. -- that were not kept.

5 Q. Okay. So you may not know but let's say you don't have
6 the logs, okay. Logs are not available, okay?

7 A. Yes.

8 Q. The logs are not available, the only way to know is to
9 interview the patient, right?

10 A. Yes.

11 Q. And that wasn't done for anyone as far as you know except
12 for those patients that I asked you about, right?

13 A. No, there were others.

14 Q. And they'd be in the reports?

15 A. It's articulated in there who I interviewed, not Caucasian
16 but African-American, time and again the various people, if
17 they got them or not.

18 Q. Okay. But the patients that I asked you about --

19 A. That they asked me about --

20 Q. You talked about -- we went through, you agree, after
21 August 2012 they asked you about three non-Med-4 patients,
22 right?

23 A. Yes.

24 Q. Who were all white?

25 A. Yes.

1 Q. And they didn't ask you about any report or allegation
2 involving any other patient you interviewed, right?

3 A. Gregory Fowler.

4 Q. Okay. And you never interviewed him, did you?

5 A. I don't believe -- no, I did not.

6 Q. And because you didn't interview him, you don't know
7 whether he got his prescriptions or not?

8 A. Correct.

9 Q. And that's true for every single patient reported by Lisa
10 Ridolfi, isn't it?

11 A. No. They were returned to the pharmacy. They were found
12 in the bins, the labels were pulled off. That, to me, is
13 indicative that they did not receive their medication.

14 Q. Ms. Gutberlet, isn't it true that unless you
15 interviewed -- the logs were unavailable, let's assume the logs
16 are unavailable, if the logs are unavailable the only way to
17 know if the patient received the prescription is to interview
18 the patient?

19 A. Yes.

20 Q. Yes?

21 A. Yes. Or the delivery driver.

22 Q. All right. Do you remember telling anyone, you know, that
23 assuming -- that other than the issue of logs, putting aside
24 that, the only way to know one way or the other is to interview
25 the patient?

1 A. Yes.

2 Q. In fact, you said that under oath, didn't you?

3 A. I don't recall.

4 Q. Okay. Let's play that clip.

5 (Video playing.)

6 Q. All right. So does that refresh your recollection,
7 Ms. Gutberlet?

8 A. Yes.

9 Q. That was truthful testimony, right?

10 A. Yes.

11 Q. Again, putting aside the log issue, correct?

12 A. Yes.

13 Q. Do you agree now you had to interview the patient if you
14 didn't have the logs to know whether they received the
15 prescriptions, correct?

16 A. Yes.

17 MR. GREENBERG: Nothing further.

18 THE COURT: All right. Thank you very much. You may
19 step down. You're excused. Call your next witness.

20 MR. EISER: Your Honor, could I just ask a question
21 before the witness is --

22 THE COURT: Go ahead. I'll allow it.

23 MR. EISER: Not of her, of you. This witness is not
24 in the subpoena power of the Court. And I'm not understanding
25 the objection to her reports.

1 My understanding is he's saying that it only comes in for
2 the state of mind, but these are official government reports,
3 and they're factually reporting what she received. And I don't
4 understand why they wouldn't come in --

5 **THE COURT:** So you say it's more than just a hearsay
6 exception to show the effect on the listener, it comes in as
7 substantive evidence because it's a public record.

8 **MR. EISER:** Yes.

9 **MR. GREENBERG:** I happy to respond to that, Your
10 Honor.

11 It is well established in the case law that interview
12 reports such as 302s, or these types of interview reports that
13 MFCU does, are not business records. They are not public
14 record -- public reports like the government asserted the OPR
15 report was. They're multiple levels of hearsay, at least one
16 level of hearsay.

17 I mean, we -- if the government has cases to the contrary
18 we're happy to look at them, we're happy to also cite cases
19 ourselves, but this is a well-settled issue.

20 **THE COURT:** Let me take this under advisement
21 overnight. First of all, they're not business records, if
22 anything they're public records. And there is a very peculiar
23 little exception to the exception in the rule on public records
24 that says that a policeman's memo book cannot be used as a
25 public record. Words to that effect. And the background in

1 the book that I use when I teach evidence says, when the Rules
2 of Evidence were adopted the defense bar did not want their
3 clients to be convicted when the policeman was not there in a
4 traffic accident case to introduce his memo book. That's too
5 much of a shortcut.

6 Now, whether that -- so it's not admissible as a hearsay
7 exception. Whether that's broad enough to cover what we're
8 talking about here, I'm not sure. I need to think about that
9 overnight.

10 **MR. GREENBERG:** Let me make one quick point, Your
11 Honor. So the difference here from I think what you just
12 described is that a police officer's report, if it's just
13 reflecting what they saw, yeah, that's hearsay and that's -- as
14 Your Honor correctly pointed out, but this is more than that.
15 This is a law enforcement officer's report on what an
16 interviewee told them sometimes about what an interviewee heard
17 from a third person or a fourth person.

18 So it's hearsay from any time there's someone like Ridolfi
19 or Tokofsky or these non-Med-4 patients who were interviewed,
20 they're hearsay and they're only admissible for the state of
21 mind of the agents.

22 **MR. EISER:** Your Honor, the Plaintiff's complaint is
23 built on hearsay. If we're going to be doing this then the
24 affidavit, which is entirely hearsay, should be excluded and we
25 can dismiss the case.

1 **THE COURT:** Let's don't bog down. Let me think about
2 this overnight. If we had a jury here, it would be more
3 important to solve it right now.

4 But here's the rule, Rule 803-8, one of the 803 exceptions
5 to the hearsay rule. Public records. This is an exception:
6 "A record or statement of a public office if, A) it sets out
7 the officer's activities on a matter observed while under a
8 legal duty to report," and here's the important part, comma,
9 "but not including in a criminal case a matter observed by law
10 enforcement personnel."

11 Well, this is not a criminal case. So that little unique
12 provision doesn't apply here.

13 **MR. GREENBERG:** Well, Your Honor, the reports were
14 prepared for a criminal case so we would argue that it does.

15 **MR. PHELPS:** Your Honor, hearsay never applies when
16 you're making a probable cause assessment.

17 **THE COURT:** I tend to agree. I'd like to think about
18 it overnight. I'm inclined to let it in for the truth of the
19 matter asserted. I'm not going to decide the case tonight.
20 Let me just think about it. I want to go slow and get this
21 right.

22 **MR. GREENBERG:** Thank you, Your Honor. I just want to
23 say that we agree with Mr. Phelps that hearsay can be used for
24 an affidavit, that's not our point, because that goes to the
25 agent's state of mind again.

1 **THE COURT:** So much of what we're doing here is state
2 of mind, effect of the words on the listener in terms of
3 establishing probable cause for judicial officer. Let me think
4 about it overnight.

5 **MR. GREENBERG:** Thank you, Your Honor.

6 **THE COURT:** I understand your relative positions. The
7 Government offers the report *in toto* for the truth of the
8 matter asserted, not just for this witness' statement, but what
9 she was told by people she interviewed that went into the
10 report.

11 **MR. EISER:** Yes, Your Honor.

12 **THE COURT:** Defendant objects on hearsay grounds.

13 We'll talk about this tomorrow morning. Anything further
14 of this witness?

15 **MR. GREENBERG:** No, Your Honor.

16 **THE COURT:** Thank you. You may step down. Please
17 call your next witness.

18 **MR. GREENBERG:** Your Honor, Plaintiff Reddy
19 Annappareddy calls former FBI Special Agent Maura Lating.

20 **THE CLERK:** Ma'am, can you please remain standing and
21 raise your right hand.

22 (Witness sworn.)

23 **THE CLERK:** You may be seated.

24 **THE WITNESS:** Thank you.

25 **THE CLERK:** And for the record, ma'am, could you just

please state and spell your first and last name.

THE WITNESS: Sure. My name is Maura, M-A-U-R-A. J is my middle initial. Lating, L-A-T-I-N-G. Thank you.

DIRECT EXAMINATION

BY MR. GREENBERG:

Q. Good afternoon, Ms. Lating, how are you?

A. Good afternoon.

10 Q. You were a very experienced FBI special agent when you
11 worked on the Pharmacare matter, weren't you?

12 A. Yes.

13 Q. You had worked for the FBI almost entirely in white collar
14 criminal cases, right?

15 A. While I was in Baltimore, correct.

16 Q. And you had done numerous search warrant applications
17 before the -- before the Google emails one that you did in
18 April 2013, before the Pharmacare matter, right?

19 A. Correct. In other cases, correct.

20 Q. Right. And you had done numerous search warrants for
21 location to seize physical evidence, including computers, prior
22 to the -- what's been called the Lating affidavit you presented
23 July 23rd, 2013, right?

24 | A. Yes.

25 Q. And you had worked on many healthcare fraud

1 investigations?

2 A. Yes.

3 Q. You joined the investigation team for Pharmacare in early
4 January 2013, right?

5 A. Yes.

6 Q. And you are a meticulous agent, right? You were a
7 meticulous agent when you were a Federal Bureau of
8 Investigation special agent?

9 A. Yes.

10 Q. And that included during the Pharmacare investigation?

11 A. Yes.

12 Q. Let's just limit this to the period from early January,
13 2013 to July 23rd, 2013 -- my next questions, okay?

14 A. Yes, sir.

15 Q. Ms. Lating, you did your best as an FBI special agent
16 during that time frame, as throughout your career, to be
17 accurate, right?

18 A. Every day, sir.

19 Q. And you would never, knowingly, mislead a prosecutor,
20 right?

21 A. Never.

22 Q. And you would always tell the truth to prosecutors?

23 A. Yes.

24 Q. You wouldn't leave out any facts that were significant
25 when you're talking to prosecutors?

1 A. You need -- could you rephrase that question?

2 Q. Well, if there are facts that were important -- let's

3 actually back up. Let's talk about -- you know what a 302 is,

4 right?

5 A. Yes.

6 Q. You probably wrote hundreds, if not thousands, of 302s in

7 your career, right?

8 A. That's correct.

9 Q. And you would never leave out facts that you thought were

10 important when writing a 302, right?

11 A. No, I wouldn't.

12 Q. You mean correct?

13 A. I would not leave out anything --

14 Q. Right.

15 A. -- intentionally in my 302 from my notes, no, I wouldn't.

16 Q. So there would never be a 302 that you wrote that would

17 leave out multiple important facts, right?

18 A. Not intentionally, no.

19 Q. When you saw a need to corroborate what a witness said,

20 you would always either do it yourself or have an agent that

21 you trusted do that, right?

22 A. I would have an agent. I would either do it myself, that

23 would be my preference, or I would delegate an agent to do it.

24 Q. Okay. So your preference would be to do it yourself?

25 A. That's usually my preference, yes.

1 Q. And like your 302s, the emails that you wrote the fellow
2 members of the investigation team for Pharmacare, as in your
3 other matters, they'd never misrepresent anything, right?

4 A. Could you say that again, sir?

5 Q. Well, you sent a number of emails when you worked on the
6 Pharmacare matter, right?

7 A. Yes, I did.

8 Q. To Robert Mosley?

9 A. Yes, of course.

10 Q. Pam Arnold?

11 A. Yes.

12 Q. Other agents, yes?

13 A. And prosecutors, correct.

14 Q. And the prosecutors, right?

15 A. Uh-huh.

16 Q. And in those emails you never misrepresented anything,
17 right?

18 A. I never would intentionally represent [sic] in an email or
19 in a 302.

20 Q. And you never omitted a material fact that you understood
21 to be material, right?

22 A. I would never do that, no.

23 Q. Never?

24 A. Not intentionally, no. It's not who I am.

25 Q. And you understood that the prosecutors viewed you as

1 reliable, right?

2 A. I would think so, with my experience.

3 Q. And your state of mind when you worked on the Pharmacare
4 matter was that Sandra Wilkinson trusted you, right?

5 A. I've worked with her in the past so, yes, I believe she
6 trusted me.

7 Q. And you knew that Cathy Pascale also trusted you, right?

8 A. It was my first time working with her. But I think we had
9 a trust between us.

10 Q. Let's put it this way, your understanding was that
11 Ms. Pascale trusted you?

12 A. I think they trusted my experience being the most
13 experienced agent on the team.

14 Q. Right. And you were the most experienced agent on the
15 team, like, 25 years, right?

16 A. Right. It would have been 25 years in 2013, correct.

17 Q. So two and a half decades, mostly white collar crime,
18 right?

19 A. Yes.

20 Q. And many healthcare fraud investigations?

21 A. Yes.

22 Q. And so you understood that in addition to the trust, the
23 prosecutors relied on you and your experience?

24 A. I think so.

25 Q. But you know so. Your understanding is they relied on

1 you, right?

2 A. I was the leader. I became the leader of the
3 investigative team as the agent in charge, yes.

4 Q. And your understanding as a leader, yes, you would agree
5 that prosecutors relied on you, right, your understanding?

6 A. Yes, I would say that.

7 Q. Let's talk about Special Agent Mosley. You knew that he
8 had -- well, let me actually back up.

9 You knew when you worked in the Pharmacare matter that
10 Special Agent Robert Mosley worked for the U.S. Department of
11 Health and Human Services, Office of Inspector General, right?

12 A. Yes.

13 Q. And you knew that Special Agent Mosley, his job was to
14 enforce federal healthcare laws and regulations, right?

15 A. Yes.

16 Q. And you trusted the information Mosley gave you about
17 those laws and regulations, right?

18 A. Yes.

19 Q. And you relied on Special Agent Mosley to give you
20 accurate information about those laws and regulations, right?

21 A. Yes.

22 Q. And you also knew that Special Agent Mosley is the one who
23 suggested using MEDIC and that analysis, right?

24 A. I don't -- I don't think I knew that.

25 Q. Okay. We can come back to that.

1 A. Okay.

2 Q. You understood when you worked on the Pharmacare matter,
3 there's a difference between a retail pharmacy and a
4 closed-door pharmacy, right?

5 A. Correct.

6 Q. Specifically, you understood there's the difference
7 between a retail pharmacy and a closed-door specialty pharmacy,
8 right?

9 A. Yes.

10 Q. And you understood that the CareMerica store that
11 Pharmacare operated opened in or about December of 2012, right?

12 A. Reopened, correct.

13 Q. Well, no. It didn't reopen because it never was a
14 specialty pharmacy until then, right?

15 A. It changed its name and remodeled so yes. December 2012
16 roughly it re-- it opened.

17 Q. It would be inaccurate to say that it reopened?

18 A. Okay.

19 Q. Do you agree?

20 A. Correct.

21 Q. Correct, right?

22 A. Correct, yep.

23 Q. Because it was a new specialty pharmacy, right?

24 A. Right.

25 Q. And a specialty pharmacy is fundamentally different from a

1 retail pharmacy, isn't it?

2 A. It is. It is.

3 Q. And that's because a specialty pharmacy has no walk-in
4 clients, right?

5 A. Well, closed-door pharmacy has no walk-in client.

6 Q. Okay. A closed-door specialty pharmacy --

7 A. Correct, correct.

8 Q. -- has no walk-in clients?

9 A. Correct.

10 Q. And so -- and a specialty pharmacy focuses on expensive
11 drugs like HIV drugs, right?

12 A. It specializes in certain types of medications. It can be
13 expensive. But it can also specialize in a certain type of
14 condition, like, cancer meds or fertility drugs. It could have
15 its own little specialty that they focus in on. That was my
16 understanding.

17 Q. And you understood that the CareMerica specialty pharmacy
18 that newly opened in December 2012 focused on Med-4s, right?

19 A. That was a term that -- I guess that's a term that they
20 used at CareMerica or Pharmacare, Med-4s, I hadn't heard that
21 term before.

22 Q. Okay. Let me put it this way, you understood -- we'll
23 come back to Med-4s, but you understood that CareMerica focused
24 for Pharmacare on HIV drugs, hepatitis C drugs, and cancer
25 drugs, right?

1 A. And others, correct.

2 Q. But mostly those three categories, right?

3 A. Correct.

4 Q. In fact, they were the overwhelming majority?

5 A. Right. There's another one, but yes.

6 Q. Okay. Now, and specifically CareMerica filled basically

7 all of the Medicaid patients' prescriptions for HIV drugs,

8 cancer, and hep C drugs, right?

9 A. What year? In 2013?

10 Q. Well, after it opened in December 2012.

11 A. That was my understanding, yes.

12 Q. Okay. And so you agree that Med-4s were the focus of the

13 Pharmacare investigation, right?

14 A. Yes.

15 Q. As that term was used by Pharmacare, right?

16 A. Yes.

17 Q. And there was never an undercover operation done at

18 CareMerica, right?

19 A. No.

20 Q. You, Maura Lating, never suggested that a fake -- that the

21 investigation team create a fake doctor to call in fake

22 prescriptions to do an undercover operation there, did you?

23 A. No. No, I did not.

24 Q. But you are aware that DOJ's fraud section uses exactly

25 that investigative tactic at times, aren't you? Weren't you?

1 A. I've read cases like that throughout the country.

2 Q. You had read those cases in 2013?

3 A. Yes.

4 Q. And you knew that tactic existed?

5 A. Yes.

6 Q. You knew that you could have created a fake doctor profile

7 to call in fake prescriptions to see what was really going on

8 at CareMerica, right?

9 A. We could have, yes.

10 Q. And you didn't?

11 A. I didn't think of that investigative technique in this

12 case.

13 Q. And Special Agent Mosley, the healthcare expert on the

14 team, whose whole job is to enforce healthcare regulations, he

15 didn't suggest that either, did he?

16 A. No, not that I recall.

17 Q. In fact, none of the agents suggested that, right?

18 A. Not that I --

19 Q. Pam Arnold didn't suggest that?

20 A. No, I don't recall that.

21 Q. And that kind of undercover operation that you are aware

22 of in 2013 when -- after you joined the Pharmacare

23 investigation, well before you submitted the Lating affidavit,

24 that kind of tactic would have corroborated or not corroborated

25 the allegations about CareMerica, right?

1 A. I don't -- I don't agree with that.
2 Q. Well, if a fake doctor set up by the investigation team
3 with their own fake website, you know that's done, right?

4 A. Okay. I know it's -- it's done.

5 Q. You know about the tactic?

6 A. I'm very familiar with the tactic.

7 Q. It's a pretty familiar investigative tactic, right?

8 A. Yes, sir.

9 Q. And had that been done where the patients of CareMerica
10 who were previously at Plumtree and who Lisa Ridolfi claimed
11 Pharmacare billed for but didn't -- patients didn't receive
12 their prescriptions, had that been done, that would have
13 corroborated or not corroborated those reports, right?

14 A. I disagree.

15 Q. So you disagree that a standard investigative tactic that
16 you are aware of in 2013 used by DOJ's fraud section would
17 have -- okay, let's put it this way. You agree -- maybe
18 corroborated or not corroborated is too simple. Maybe it's too
19 black and white.

20 You agree that if you're unable to interview the patients,
21 the only way to corroborate whether there was any shenanigans
22 going on with prescriptions to CareMerica was to either
23 interview someone who worked at CareMerica or set up a fake
24 doctor to go undercover, right?

25 A. We -- I don't recall even suggesting that or hearing

1 anybody suggest that type of tactic.

2 Q. Well, you, Maura Lating, never interviewed a single
3 patient about any prescription they got from CareMerica or was
4 billed under their name for CareMerica, did you?

5 A. I did not.

6 Q. Special Agent Mosley didn't either, right, as far as you
7 know?

8 A. I don't recall that, I don't recall.

9 Q. As far as you know he never did it?

10 A. I don't recall.

11 Q. Your understanding during the Pharmacare investigation is
12 that your fellow core investigative team members would document
13 interviews, right?

14 A. Yes.

15 Q. So if it happened, it would be in an interview report,
16 right?

17 A. Yes.

18 Q. Now, you understood when you worked on the Lating
19 affidavit that CareMerica was referred to as target location
20 number 3, right?

21 A. Yes.

22 Q. And that is the same location where the Old Emmorton --
23 the original Pharmacare store opened in 2006, right?

24 A. Correct.

25 Q. And then it closed in early January of 2012, right?

1 A. Correct.

2 Q. And it was closed for remodeling for 11 months, right?

3 A. Yes.

4 Q. And before Old Emmorton closed, the Med-4 prescription
5 business was moved to Plumtree, almost all of it?

6 A. I believe it was on or about February of 2011 it moved to
7 Plumtree, the Med-4 billings.

8 Q. Okay. In February of 2011 is also when Lisa Ridolfi began
9 working at Plumtree, right?

10 A. She started early -- correct, early 2011. I'm not sure of
11 the exact date.

12 Q. And you, as a diligent agent, read Laurie Gutberlet's
13 interview memorandum?

14 A. Right, I did.

15 Q. You read them carefully?

16 A. I did.

17 Q. You relied on them?

18 A. It's how I drafted the affidavit.

19 Q. And if you found something that contradicted what Laurie
20 Gutberlet had found based on new information, you wouldn't put
21 that in the affidavit, right?

22 A. Could you repeat that? If I --

23 Q. Okay. So you agree Laurie Gutberlet left the MFCU, left
24 the investigation team in early April 2013, right?

25 A. Correct.

1 Q. So that was May, June, July -- so it's about, what, three
2 and a half months before you presented the Lating affidavit?

3 A. Yes, roughly.

4 Q. All right. So if you learned important new information
5 during that three and a half-month period that Laurie Gutberlet
6 didn't know, and that contradicted her memos, you wouldn't use
7 that part of her memos, right?

8 A. I would look into it myself or delegate someone to look
9 into it to get clarification if I didn't feel comfortable with
10 something in one of her reports.

11 Q. Okay. And unless you got -- so you would personally look
12 into it yourself?

13 A. Or delegate someone on the team to follow up with what I
14 have for a question and then get back to me.

15 Q. Okay. But if it was one of the key issues in the case,
16 you would either look into it personally or delegate it to
17 Special Agent Mosley or Pam Arnold, right?

18 A. Or discuss it with my prosecutors.

19 Q. Well, the prosecutors weren't out there interviewing
20 people, right?

21 A. No, but I would discuss my concerns of putting something
22 in an affidavit --

23 Q. Okay.

24 A. -- that that could be in Laurie Gutberlet's report that
25 was contradicting.

1 Q. All right. Let's put it this way, if there was a need to
2 do further interviews to see if the inconsistency was
3 problematic, you would either do those yourself or ask Special
4 Agent Mosley or Pam Arnold to do it, right?

5 A. Or James Ryan or Jimmy Young.

6 Q. Jimmy Young?

7 A. Yes.

8 Q. But he was not one of the core investigation team members,
9 was he?

10 A. No, he wasn't.

11 Q. So if it most likely was an important issue, it would be
12 you because you like to do things personally or alternatively
13 Mosley or Arnold, right?

14 A. Correct.

15 Q. Now, let's talk about Dennis Tokofsky. You understood
16 that he was a so-called whistleblower, right?

17 A. Yes.

18 Q. And you understood that as a whistleblower who filed a *qui
tam* complaint, you knew that he filed a *qui tam* complaint the
19 day after he met with Laurie Gutberlet, right, the first time?

20 A. No, I didn't.

21 Q. Okay. Let's -- you have the binder up there with the
22 exhibits. Two binders, I think.

23 A. There's two here, sir.

24 Q. So the one I believe that should have no cover is the

1 Plaintiff's exhibit.

2 A. Okay.

3 Q. Could you please turn to --it's Tab 13, ma'am.

4 And is this the -- if you can look at actually the second
5 page, technically. The first page has -- the page that says
6 False Claims Act complaint and it says ex rel. Dennis Tokofsky.
7 Do you see that?

8 A. Do you want me to look at the screen or the paper?

9 Q. Doesn't matter. Either one.

10 A. So I'm looking at Exhibit 3 -- 13.

11 Q. Thirteen, yes, ma'am. Tab 13.

12 A. Okay.

13 Q. And you see that this is the *qui tam* complaint that Dennis
14 Tokofsky filed, right?

15 A. Yes.

16 Q. And let's turn to the very last page. It's Page 18 where
17 it has multiple attorneys and a signature block. Do you see
18 that?

19 A. Yes.

20 Q. And do you see it's dated June 19th, 2012?

21 A. Yes.

22 Q. And please turn to Government's Exhibit 1 in the other
23 binder.

24 A. Yes.

25 Q. And please turn to -- this is -- sorry, I should say this

1 is Laurie Gutberlet's report on her first interview with Dennis
2 Tokofsky dated June 26, 2012, right?

3 A. Okay, yes.

4 Q. And please turn to Page 4.

5 A. Okay.

6 Q. Do you see how it says -- there's a big all caps bold
7 heading underlined "Interview of Dennis Ross Tokofsky."

8 A. Yes.

9 Q. Under that it says, "I met Tokofsky at his residence on
10 Monday, June 18, 2012, 2:45 p.m."

11 A. Yes.

12 Q. So on the afternoon of June 18th, 2012, Laurie Gutberlet
13 met with Tokofsky, right?

14 A. Yes.

15 Q. And "pres" on the line, you see that says Delaney.

16 A. Yes.

17 Q. That's Tokofsky's lawyer in Boston, right?

18 A. Yes.

19 Q. Then go back to Tab 13, the last page of Tab 13 dated
20 June 19, 2012, right?

21 A. Uh-huh. Yes.

22 Q. So less than 24 hours, or at least the next day after this
23 first meeting with Tokofsky's whistleblower lawyer and
24 Gutberlet, this *qui tam* is filed, right?

25 A. Yes.

1 Q. All right. You, Ms. Lating, as an experienced special
2 agent, you're familiar with False Claims Act matters, right?

3 A. I am.

4 Q. You're familiar with the term "*qui tam*"?

5 A. I am.

6 Q. And you are familiar for many years with the term
7 "relator"?

8 A. Yes.

9 Q. You are familiar for many years with the term
10 "whistleblower"?

11 A. Yes.

12 Q. And you knew for many years, and you knew when you worked
13 in the Pharmacare investigation, that a relator in a *qui tam*
14 case can get a significant percentage of any recovery by the
15 government, right?

16 A. Yes.

17 Q. It can be, like, 25 percent, right?

18 A. I'm not sure of the percentage. I've worked the cases
19 before.

20 Q. Well, you agree it could be at least 20 percent, right?

21 A. Yes.

22 Q. So let's pretend there is a, quote, loss, of -- let's say
23 2.6 million. So if it's 20 percent, the relator gets a little
24 over 500,000, right?

25 I'm sorry, that's bad math.

1 If it's 20 percent, it would be a little over 400,000,
2 right?

3 A. Yes.

4 Q. Over 400,000?

5 A. Over 400,000.

6 Q. And if the loss is something like 20 million, then that
7 20 percent goes up to 4 million, right?

8 A. Yes.

9 Q. So the relator, and you understood this when you worked in
10 the Pharmacare matter, has a financial incentive for the loss
11 to be as large as possible, right?

12 A. Yes.

13 Q. And in this *qui tam* complaint -- Tab 13 again, ma'am.

14 A. Okay.

15 Q. If you could please turn to Page 12.

16 A. Sure. Yes, sir.

17 Q. You see Paragraph 37?

18 A. Yes.

19 Q. That first sentence, it says, "Relator estimates that
20 approximately 70 percent of the prescriptions filled by
21 defendants were never picked up and, of these, only 10 percent
22 were returned to stock in the correct manner," end of quote,
23 right?

24 A. Yes.

25 Q. And you knew the relator was Dennis Tokofsky?

1 A. Yes.

2 Q. And you knew the defendants were Mr. Annappareddy and
3 Pharmacare in this *qui tam* matter, right?

4 A. Correct.

5 Q. And you knew that even just as of say mid June 2012,
6 Pharmacare had done -- gotten paid over \$30 million from
7 Maryland Medicaid alone, right?

8 A. It was over -- about 35.9 million from 2007 to 2013.

9 Q. Well, okay, we can come back to precise numbers. But
10 let's just do it this way. You agree that as of mid June 2012,
11 Pharmacare had been paid at least 25 million by Maryland
12 Medicaid, right?

13 A. Yes.

14 Q. And you agree that based on this estimate, that Tokofsky
15 put in Paragraph 37, he would stand to earn many millions of
16 dollars if the government recovered the amount of fraud loss
17 that he's alleging here, right?

18 A. Yes.

19 Q. All right. You can put that exhibit aside for the moment.
20 Actually, you know what, I take it back. Let's just stick with
21 this for a second.

22 A. Okay.

23 Q. So now turn to, please, Page 10 of this document,
24 Paragraph 32. Let's highlight the middle sentence. Starts
25 with "information and belief" actually, you know what, let's

1 back up to Paragraph 31.

2 You understood from Ms. Gutberlet's memos that -- and from
3 the *qui tam* complaint, that Mr. Tokofsky made allegations about
4 an incident in January 2012, right?

5 A. Yes.

6 Q. And that incident, according to Mr. Tokofsky, involved him
7 finding approximately 200 prescriptions, mostly Med-4s, that
8 were he said undelivered, right?

9 A. Correct.

10 Q. And Mr. Tokofsky, his understanding of Med-4 is they
11 basically meant HIV drugs and sometimes hep C, right?

12 A. And others, other types of drugs.

13 Q. I'm just saying Mr. Tokofsky's understanding?

14 A. Okay.

15 Q. Do you agree with that?

16 A. Yes, yes.

17 Q. All right. Now, here you can see in Paragraph 31 it talks
18 about at the beginning of 2012. Highlight that, please.

19 Do you see that?

20 A. Yes, sir.

21 Q. It says, "At the beginning of 2012, the Defendants began
22 moving the flagship store Bel Air to Plumtree, Maryland."

23 A. Yes.

24 Q. And by Bel Air, that meant the original Old Emmorton
25 store, right?

1 A. Right. He's referring to 2227 Old Emmorton.

2 Q. Right. You remember the address, that's -- after this
3 time that's impressive.

4 Now, the Paragraph 31 we've already established, and you
5 agree, that the Old Emmorton store closed for remodeling in
6 early January 2012, right?

7 A. Correct.

8 Q. And you testified earlier that the Med-4s had previously
9 in February of 2011 been moved to Plumtree, right?

10 A. They were.

11 Q. So the answer is yes?

12 A. Yes.

13 Q. Paragraph 31 goes on and talks about how Mr. Tokofsky was
14 literally cleaning out a room when he found several hundred old
15 prescriptions, many predating his arrival at the company,
16 right?

17 A. Yes.

18 Q. Then it says, "All these prescriptions were in the
19 dispensing bag and had obviously never been picked up or
20 returned to stock," right?

21 A. Yes.

22 Q. Then let's highlight that middle sentence in Paragraph 32.
23 "On information and belief, these several hundred prescriptions
24 were never reversed," right?

25 A. Yes.

1 Q. And that communicated to the federal judge, who read this
2 *qui tam* complaint, that the claims Pharmacare submitted for
3 those prescriptions none of those were reversed, right?

4 A. That's what he's saying in the *qui tam*, yes.

5 Q. So that facilitated that allegations to the federal judge
6 who read this complaint, right?

7 A. Yes.

8 Q. Let's go back -- I don't know if we need to go back. You
9 have an excellent memory so you probably know this already.
10 You know when Mr. Tokofsky talked about this incident to
11 Ms. Gutberlet in the first time he met her, and also in the big
12 meeting at civil AUSA Mike DiPietro's office in August 2012,
13 Tokofsky didn't say that he -- that these prescriptions, the
14 claims weren't reversed, did he?

15 A. My recollection was he was not sure if they had been
16 reversed. He was just told to take the labels off the bags and
17 to take the bags over to Plumtree to put on the shelf.

18 Q. And you agree there's a big difference between not being
19 sure if a claim is reversed and telling a federal judge it was
20 never reversed, right?

21 A. In the -- in the interview my best recollection was he was
22 told by Mr. Annappareddy take the labels off the bags. He
23 handed the stack of labels to Mr. Annappareddy, and he wasn't
24 sure if they got reversed or not.

25 Q. Right. That's not really my question, Ms. Lating. My

1 question was, do you agree there's a big difference between
2 being unsure whether or not a claim was reversed and telling a
3 federal judge it was never reversed?

4 **MR. EISER:** Objection.

5 **THE COURT:** It says, "Upon information and belief," is
6 that the basis of the objection?

7 **MR. EISER:** Yes, Your Honor.

8 **THE COURT:** He's not necessarily telling the judge.
9 He says upon information and belief. We'll leave it at that.
10 I understand your point.

11 **MR. GREENBERG:** All right.

12 **BY MR. GREENBERG:**

13 **Q.** And Mr. Tokofsky claimed when he spoke to Ms. Gutberlet
14 and then also, I believe, at the meeting on August 2012,
15 Mr. Tokofsky claimed he wasn't able to check whether the claims
16 were reversed, didn't he?

17 **A.** No, he wasn't able to -- no, that's correct. Because
18 something to do with the computers weren't up or they were down
19 or whatever. I don't -- I'm not sure. There was something
20 wrong with the computers.

21 **Q.** Right.

22 **A.** He couldn't check.

23 **Q.** And you knew Mr. Tokofsky throughout his eight-month
24 tenure with Pharmacare was the chief operating officer?

25 **A.** Yes.

1 Q. So when the chief operating officer reported to Gutberlet
2 and then this special meeting that Special Agent Mosely
3 attended in August of 2012 at Mr. DiPietro's office, that
4 because of the computer issue he wasn't able to check whether
5 the claims were reversed, you accepted that statement as true?

6 A. I wasn't there.

7 Q. Well, but you read the memos on it, right?

8 A. My recollection was -- I'm not sure -- it's, like,
9 Paragraph 30 or in this -- 33 in this *qui tam* -- he had jotted
10 down some and noted in the *qui tam* some prescription numbers,
11 and I believe that was checked out by Robert Mosley in this *qui*
12 *tam*.

13 Q. Okay. So Robert Mosley is the one who did the follow up
14 to see about whether Tokofsky's report was accurate?

15 A. Rob Mosley and Pam Arnold, it's Paragraph 32 of the *qui*
16 *tam*. He had noted some prescription numbers, and they followed
17 up on those to see if they were reversed or what the status of
18 those claims were.

19 Q. And you see how there's a table with five prescription
20 numbers on the next page, Page 11 of Plaintiff's Exhibit 13?

21 A. Yes, sir. That's what I'm referring to.

22 Q. And these are the prescription numbers that Dennis
23 Tokofsky represented in his *qui tam* that he wrote down
24 contemporaneously when he saw these 200 prescriptions, right?

25 A. Yes, sir.

- 1 Q. And why don't we just highlight those, the table, please.
2 This table, there's four patients, right?
3 A. Five.
4 Q. So patient A appears twice, do you see that?
5 A. I'm sorry. It's five prescription numbers and there's --
6 right.
7 Q. I may have misspoken. Let's start with the patients.
8 There's two entries for patient A?
9 A. Right.
10 Q. And there's three other patients, right?
11 A. Correct.
12 Q. So four patients?
13 A. Right.
14 Q. And there's five different six-digit prescription numbers,
15 right?
16 A. Yes.
17 Q. And then there's a specific date for each of those
18 prescription numbers, right?
19 A. Yes.
20 Q. And the payor for all five prescriptions?
21 A. Yes.
22 Q. And four of the five are Maryland Medicaid?
23 A. Yes.
24 Q. And the other one is Medicare Part D?
25 A. Yes.

1 Q. And this is the information that Tokofsky told a federal
2 judge on the *qui tam* complaint that he wrote down
3 contemporaneously when he said he saw those 200 prescriptions
4 that he said he found?

5 A. Yes.

6 Q. All right. And you have, I think, clarified or testified
7 that Robert Mosley and/or Pam Arnold were the ones to do any
8 follow up to see if this account by Tokofsky is accurate,
9 right?

10 A. Yes.

11 **MR. GREENBERG:** Your Honor, I think this would be a
12 good time to end if that's okay.

13 **THE COURT:** Let's end here. Stop the clock, please.
14 Thank you. You may step down.

15 **THE WITNESS:** Thank you, Your Honor.

16 **THE COURT:** Before we leave, Mr. Greenberg, can you
17 give me the exhibit numbers to which you objected when
18 Ms. Gutberlet was on the stand at the very end?

19 **MR. GREENBERG:** Oh, boy.

20 **THE COURT:** It was two or three documents.

21 **MR. GREENBERG:** Well, I think the objection, I mean,
22 Your Honor overruled it so I don't want to, you know --

23 **THE COURT:** Well, I said I'd take it under advisement.

24 **MR. GREENBERG:** No, no, no, I know. So it's -- it's
25 actually the same -- I'll give you the ECF number. Hang on one

1 second.

2 **MR. EISER:** Your Honor, I could list those.

3 **MR. GREENBERG:** I've got it, thanks. So it's the same
4 documents that we went over, I think, in the morning. Well, I
5 guess it's not all of them. But it's basically any interview
6 report that is an interview of a patient, or anyone, a former
7 employee, current employee that includes hearsay statements,
8 out-of-court statements by the interviewee, we object to the
9 use of the interview report for any purpose other than the
10 agent's state of mind.

11 So it would cover --

12 **THE COURT:** Well, state of mind is important here.
13 Especially, you know, for malicious prosecution you've got to
14 prove an absence of probable cause and malice.

15 **MR. GREENBERG:** Your Honor --

16 **THE COURT:** And the law is malice may be inferred from
17 a lack of probable cause, but the key word is may, doesn't have
18 to be.

19 **MR. GREENBERG:** Yes, Your Honor.

20 **THE COURT:** And some of this information seems to me
21 could at least come in to defeat a finding of malice by the
22 fact-finder. What am I missing on that?

23 **MR. GREENBERG:** I may have been unclear. Let me try
24 to frame it differently, and I apologize if I wasn't clear.

25 What I meant is that we agree those reports, those

1 interview memos, come in for the agent's state of mind. We
2 fully agree with that. I don't think there's any dispute on
3 that.

4 **THE COURT:** Are you saying state of mind in the same
5 sense as probable cause or not?

6 **MR. GREENBERG:** Yes, they come in -- I mean, so the
7 agent's state of mind under the *Franks* test that Your Honor has
8 correctly ruled applies here under Maryland law, the agent's
9 state of mind is critical. So Lating's and Mosley's states of
10 mind are critical.

11 And the interview memos, interview reports are admissible
12 for the purpose of showing the agent's state of mind, but
13 they're not admissible for the purpose of showing the truth of
14 the out-of-court statements of the interviewee.

15 **THE COURT:** All right. What's the response?

16 **MR. PHELPS:** Yes, Your Honor. So obviously the
17 agent's state of mind is relevant but so is the evidence. And
18 the concern that we have, Your Honor, is that we get to the end
19 of this trial and there's an argument from the Plaintiff that
20 we actually haven't put any concrete evidence of probable cause
21 in this case. And that's not really how probable cause works
22 in the course of the search warrant affidavit, right.
23 Everything in the search warrant affidavit is hearsay.

24 **THE COURT:** Always is. It's usually just one
25 affidavit packed with hearsay. Otherwise, you'd have to parade

1 a series of witnesses into the magistrate's office.

2 MR. PHELPS: Your Honor, insofar --

3 THE COURT: Well, let me finish. And sometimes it's
4 one bit of hearsay. Many a search warrant has been issued when
5 a police officer goes into a judicial officer that says we have
6 a confidential, reliable informant who's been very truthful and
7 correct in the past, and he tells us there's drug activity
8 going on at the corner of Green and Elm Streets in downtown
9 Baltimore. That's all we need to get the warrant.

10 Now, maybe in later suppression motion you can flush out
11 the identity of that confidential informant. Sometimes the
12 government resists blowing its cover so to speak. But we start
13 with the proposition that many affidavits to support a search
14 warrant contain hearsay. I'm with you on that.

15 MR. PHELPS: Yes, Your Honor. But it's substantive
16 evidence that leads to probable cause. It's not just the
17 actual state of mind of the person swearing out the affidavit.
18 It is the evidence. It is the evidence.

19 THE COURT: That's what I'm struggling with. I'm not
20 sure state of mind is the same thing as probable cause.

21 MR. PHELPS: I agree, Your Honor.

22 MR. GREENBERG: Well, Your Honor, the definition of
23 probable cause is, I mean, it's defined by state of mind. A
24 reasonable probability believed by the agent that there's more
25 probability of a crime, right.

1 So, I mean, here, if we have to -- if all this stuff comes
2 in for the truth of the matter asserted, there's no way we have
3 a chance in this case with 30 hours. We're going to have to
4 rebut all of these substantive allegations that are false, that
5 are hearsay. But, you know, look, to have -- it's one thing --
6 we agree they come in for the agent's state of mind. That's
7 all that matters for the probable cause analysis. To have them
8 come in as substantive evidence for the truth of the matter
9 asserted, we're going to have a whole rebuttal mini trial.

10 **THE COURT:** Mr. Greenberg, the pivotal issue in this
11 case is not the agent's state of mind, it's whether the raw
12 data in the affidavit established probable cause.

13 **MR. GREENBERG:** Yes, Your Honor. But the -- whether
14 the statements in the affidavit establish probable cause turns
15 on the agent's state of mind if the statements are materially
16 false under the *Franks* test and our -- the evidence will show
17 that the Lating affidavit is materially false and that Lating
18 and Mosley knew it or recklessly disregarded it.

19 **THE COURT:** We don't need to get bogging down on this
20 tonight. When the evidence is all in we can argue this for
21 what it's worth. And we'll straighten it out and decide which
22 way to go later. All right.

23 **MR. GREENBERG:** Thank you, Your Honor.

24 **THE COURT:** Anything further before we recess for the
25 day?

1 **MR. PHELPS:** No, Your Honor.

2 **THE COURT:** All right. We'll pick back up at 9:30 in
3 the morning. We'll be in recess.

4 (All Counsel - "Thank you, Your Honor.")

5 **THE CLERK:** All rise. This Honorable Court is now in
6 recess.

7 (Adjourned at 5:33 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER
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I, Ronda J. Thomas, Registered Merit Reporter, Certified
Realtime Reporter, in and for the United States District Court
for the District of Maryland, do hereby certify, pursuant to 28
U.S.C. § 753, that the foregoing is a true and correct
transcript of the stenographically-reported proceedings held in
the above-entitled matter and the transcript page format is in
conformance with the regulations of the Judicial Conference of
the United States.

Dated this 31st day of May 2023.

Ronda J. Thomas

Ronda J. Thomas, RMR, CRR
Federal Official Reporter

BY MR. EISER: [4] 142/25 144/11 166/18 205/25 BY MR. GREENBERG: [7] 58/8 63/19 65/3 125/24 126/15 129/21 132/18 MR. EISER: [39] 55/24 56/10 56/15 58/5 113/9 113/11 118/2 118/4 118/6 128/2 128/9 136/24 138/2 144/3 145/19 145/21 161/2 161/7 165/19 165/23 166/16 188/5 188/8 201/4 201/10 205/24 209/23 210/24 213/25 227/4 229/7 235/20 235/23 236/8 237/22 239/11 263/4 263/7 267/2 MR. FLOWERS: [22] 8/18 9/8 9/16 9/20 9/23 10/1 10/3 15/23 20/13 21/3 21/5 25/11 29/16 31/11 52/8 52/11 54/11 54/18 131/4 131/16 131/18 144/7 MR. 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